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services

# Responding to allegations of physical or sexual assault

Technical update 2014

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# 1. Introduction

This instruction is a technical update to the Department of Human Services *Responding to allegations of physical or sexual assault: departmental instruction* (August 2005).

This instruction outlines the immediate response requirements for all services directly delivered or funded by the Department of Human Services (the department) in response to an allegation of physical or sexual assault that involves a client.

This instruction forms part of a wider safeguarding framework including workforce strategies, quality of support/care reviews and external scrutiny processes.

Physical and sexual assault are unacceptable and must be dealt with promptly and appropriately.

## 1.1. Purpose

A major objective of human services management is to assure service users of safe progress through all components of the service system. Prevention of assault is always preferable, through strategies such as client education regarding safety, and pre-employment checks such as police, working with children and reference checks. Preventive efforts, however, will sometimes fail. Efforts to minimise the risk of harm from care provided, and the environment in which it is provided, must encompass a systematic strategy to:

- encourage the full and frank reporting of adverse events
- understand the detailed causes of adverse events
- improve the processes of care, support and training of staff on the basis of this analysis.

The aims of this instruction are to:

- ensure timely and effective responses are taken to address immediate client safety and wellbeing
- support clients who have experienced physical or sexual assault
- be accountable to clients for actions taken immediately and planned in response to their experience of an assault
- ensure due diligence and responsibilities to clients are met
- hold perpetrators of physical and sexual assault accountable for their actions.

## 1.2. Principles

The safety and wellbeing of clients and staff is paramount.

The department and organisations funded by the department have a moral, professional and legal obligation to provide a safe environment for clients and staff. Where there is a clear obligation to provide a safe environment, reporting of allegations of physical or sexual assault is mandatory.

The department does not condone assault.

### 1.3. Awareness of risk: physical and sexual assault

Physical and sexual assault are crimes against the person. Staff should be aware that many clients, including young people and people with a disability, are at greater risk of physical and sexual assault than the general population.

There are a range of risk factors found to be associated with occurrence of abuse, such as:

- people with cognitive, communication and/or sensory impairments, particularly people who are non-verbal
- people with English as a second language and/or from culturally or linguistically diverse backgrounds
- people with high physical support needs and dependence
- people who display behaviours of concern
- people without family, advocacy and community connections
- neglected physical environments, staff turnover, stress and high use of agency or casual staff
- isolated or 'closed' services, where unacceptable staff attitudes and practices can become normalised
- 'weak' management and lack of practice leadership
- lack of policy awareness and skills of staff.

Irrespective of gender, victims of sexual assault frequently experience negative outcomes including dissociation, post traumatic stress disorder, depression and anxiety. Victims of physical assault also frequently experience shock, numbness, fear, depression and anxiety. In recognition of this, after an allegation of assault additional support and/or review of current supports may be required.

### 1.4. Scope

The *Responding to allegations of physical or sexual assault: technical update 2014* sets out the management and reporting requirements relating to allegations of physical or sexual assault. This instruction contains a set of minimum standards for supporting clients and reporting allegations of physical and/or sexual assault to Victoria Police.

The instruction must be followed in conjunction with the department's critical client incident reporting and management approach. For further information refer to [www.dhs.vic.gov.au/funded-agency-channel](http://www.dhs.vic.gov.au/funded-agency-channel).

### 1.5. Definitions

Physical assault includes actions, or attempted actions, that involve the use of physical force against a person that result in or had the potential to cause harm.

Sexual assault includes rape, assault with intent to rape and indecent assault. An indecent assault is an assault that involves unwanted sexual actions forced upon a person against their will, through the use of physical force, intimidation and/or coercion without that persons consent. Examples are unwelcome kissing or touching in the area of a person's breasts, buttocks or genitals. Indecent assault can also include behaviour that does not involve actual touching, such as forcing someone to watch pornography or masturbation.

Rape involves the alleged penetration or attempted penetration (anal, oral or vaginal) through the use of physical force, intimidation and/or coercion without the other person's consent.

Further advice regarding the categorisation of physical and sexual assault is provided in the Critical client incident management instruction: technical update 2014. Refer also to the Critical client incident management summary guide and categorisation table: 2011. These are available on: [www.dhs.vic.gov.au/funded-agency-channel](http://www.dhs.vic.gov.au/funded-agency-channel)

'Client', throughout this document, is uniformly used to refer to people who receive services delivered or funded by the department. It includes people who may be referred to by a range of titles such as consumers, patients, tenants or residents in other contexts. Clients may be children, young people or adults.

## 1.6. Compulsory requirement to report to police

In some circumstances, there is a mandatory requirement to report an assault to police.

Where the client:

- is a statutory child protection client
- resides in out-of-home care
- resides in a residential service directly managed by the department, such as youth justice custodial centre, youth justice residential units, secure welfare, or disability accommodation services
- receives direct service and supports by a registered disability service provider
- has a disability and is receiving in-home or community-based services and the allegation is against a staff member of either the department or the community service organisation funded by the department to provide the services.

And the incident is reportable under the *Critical client incident management instruction: technical update 2014* and involves:

- allegation of assault of a client by a staff member or volunteer carer
- allegation of assault of a client by a client
- allegation of assault of a client by a visitor, family member, other non-staff member or member of the community
- allegation of assault of a staff member, visitor, other non-staff member or member of the community by a client.

The allegation of assault must be reported to the police, whether or not the client has consented to the matter being reported. The client may choose not to participate in the police investigation.

## 1.7. Requirements to report to police for other services

### 1.7.1. Clients receiving in-home or community-based disability services and allegations of other-to-client assault

The situation may arise where a client has a disability and is receiving in-home or community-based services, and a staff member becomes aware of an allegation of an assault on the client

perpetrated by a non-staff member. In this instance the staff member must assist the client to seek support and to make a decision about reporting the alleged assault to police:

- In-home support staff must contact police if they perceive an immediate risk of harm to the client from the physical or sexual assault (with or without consent).
- If a client is not at immediate risk of harm, and consent to report the allegation of assault to the police has not been obtained, the in-home support staff must liaise with their supervisor or the case manager to make the report to police or assist the client to engage other services as appropriate (such as counselling, sexual assault counselling services or advocacy).

Information regarding the department and community service organisations' obligations and requirements in relation to reporting allegations of assault must be made available to clients at initial contact.

### 1.7.2. Assault of a staff member by another staff member

It should be noted that an allegation of assault of a staff member by another staff member is not included in this instruction, as there are existing procedures for dealing with such instances. Please refer to your organisation's guidelines.



## 2. Consent to reporting the allegation

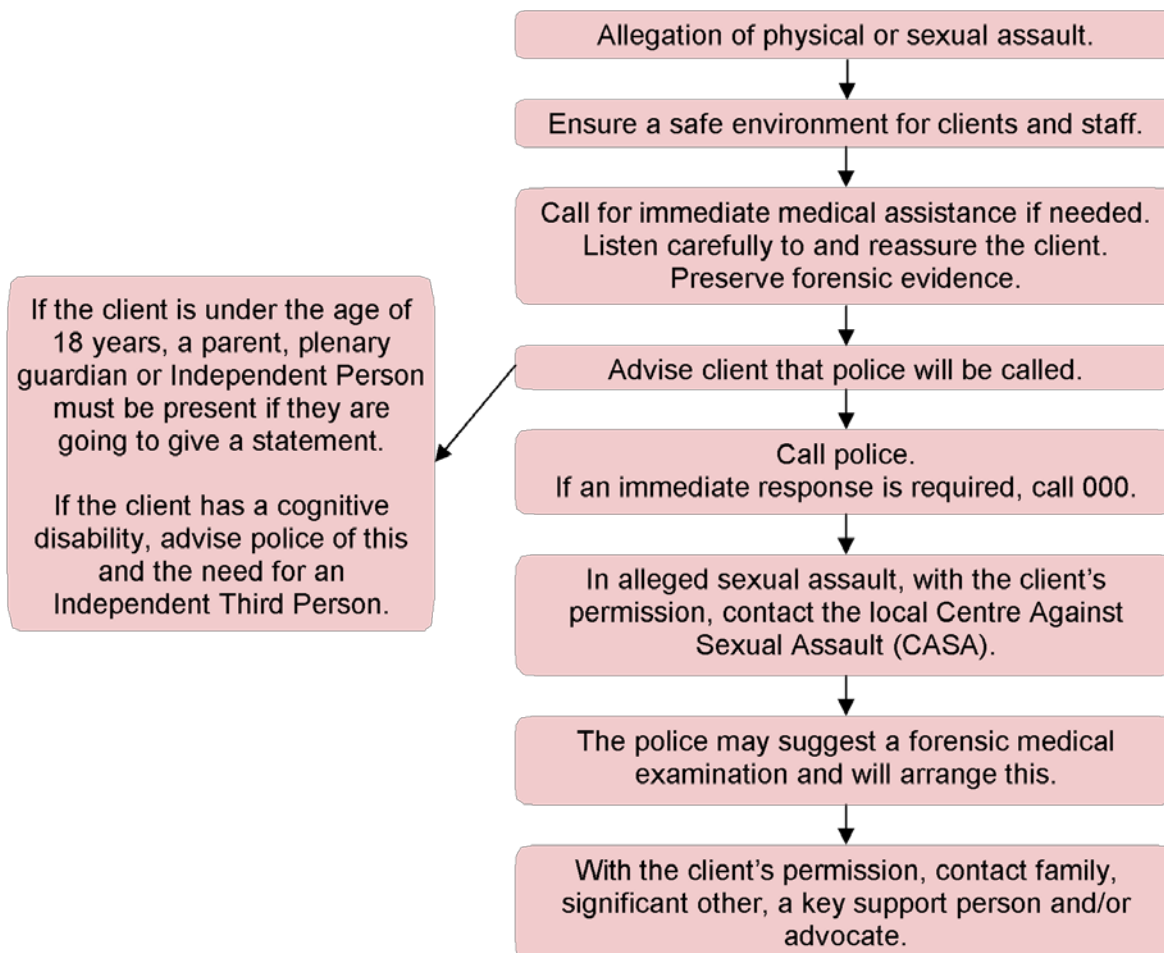
Alleged criminal acts that occur during service delivery must be reported to the police as soon as practicable. The relevant service provider is responsible for fulfilling this expectation.

Both the *Information Privacy Act 2000* and the *Health Records Act 2001* contain provisions for the disclosure of personal information relating to criminal offences.

### 3. Reporting the allegation to police

This section provides guidance about when and how to report an allegation of assault to police.

Figure 1: Immediate response to an allegation of assault



### 3.1. Indicators of possible assault

A staff member may become aware of a possible assault under various circumstances including:

- a client alleges that an assault has occurred
- a staff member or volunteer observes an assault
- a staff member or volunteer suspects that an assault has occurred, for example, a client may have unexplained injuries, a client may be distressed and bruised, or clothes may have been ripped
- a staff member, volunteer or visitor alleges assault by a client
- a client's behaviour changes significantly (this might include self-destructive behaviour, sleep disturbances, acting-out behaviour, or persistent and inappropriate sexual behaviour)
- a client complains of physical symptoms or a staff member observes symptoms (this might include abdominal pain, sexually-transmitted disease or pregnancy).

Where a staff member considers that a client's behavioural changes or symptoms may be a result of sexual assault, they should contact a senior officer or on-call supervisor to discuss their concerns.

### 3.2. Assess the situation

When an allegation is made, or a staff member becomes aware of an assault, staff should immediately assess the situation to ensure a safe environment. Once safety is established, the first priority is to care for the client, and they must be given maximum support and assistance.

Allegations of assault should always be treated seriously. The client's feelings about themselves may be influenced by initial reactions to their allegation. If an assault is disclosed, or a staff member becomes aware of such an assault, a helpful response may include:

- telling the person that you believe them
- making it clear that whatever has happened is not their fault
- reassuring the person who disclosed the assault that they did the right thing
- telling the person that some people do wrong things and that the perpetrator is responsible for the assault
- doing everything possible to listen carefully to and reassure the person, including explaining the actions you will take next.

### 3.3. If necessary, seek emergency medical assistance

If the victim requires immediate medical attention, a medical practitioner or ambulance should be called, or the victim conveyed to the nearest hospital accident and emergency department.

Where a staff member is the alleged perpetrator of physical or sexual assault, any medical practitioner called should be independent of the service where the alleged assault took place.

### 3.4. Responsibility for reporting

The staff member or volunteer who first becomes aware of the allegation must advise the reporting senior staff member in the relevant work area of details of the allegation.

The most senior staff member in the relevant work area (such as a house or unit), present at the time the allegation is made, is responsible for reporting the allegation of assault to the police.

The report must be made as soon as practicable, once immediate safety and medical needs are met.

The staff member or volunteer who first becomes aware of the allegation must be available to assist the police with any investigation.

### 3.5. Advice to person of report to police

In relation to a victim of assault, the staff member or volunteer who first becomes aware of the allegation must advise the person that the allegation will be reported to the police.

In relation to an alleged perpetrator, staff should consult with police as to whether the person should be told of the report to police. It is important that any steps taken do not undermine action that police may instigate.

### 3.6. Call the police

Where an immediate police response is required, call 000.

The phone call will result in the allocation of the appropriate response unit, which may be a Sexual Offence and Child Abuse Unit / Sexual Offences and Child Abuse Investigation Team (SOCAU/SOCIT) for the area or a general duties police unit.

If the client is under the age of 18 years, a parent, plenary guardian or independent person must be present if they are going to give a statement.

At the time of contact it is important that police are advised if the client has a cognitive disability or mental illness and will need support of an independent third person during interview or when a statement is being taken. Cognitive disability can include intellectual disability, acquired brain injury and dementia.

Where the client uses an alternative form of communication, such as symbols, signs or facilitated communication, an independent third person can usually assist the client to communicate with the police.

It is the responsibility of the police to contact the independent third person..

### 3.7. Contact the local Centre Against Sexual Assault

If the client consents, in instances of alleged sexual assault, the most senior staff member in the relevant work area should contact the local Centre Against Sexual Assault (CASA) at the same time the police are informed of the allegation.

The Centre Against Sexual Assault should always be involved unless the client does not want contact with this service. Where the allegation is of sexual assault and the client is examined by a forensic medical officer or forensic nurse examiner, staff must ensure that the alleged client is

offered the assistance and support of a counsellor-advocate from the Centre Against Sexual Assault.

If the client is a person with a disability who does not have the capacity to consent, consent should be obtained from the person's guardian, where possible, to contact a Centre Against Sexual Assault (see section 4.3).

Centres against sexual assault operate throughout Victoria and provide counselling, advocacy, support and information to adults, young people and children who have experienced sexual assault, whether they were children or adults when the assault was perpetrated. The 24 hour Sexual Assault Crisis Line can be contacted on 1800 806 292 from anywhere in the state and a duty worker will respond.

Services are free and confidential to all victim/survivors of recent and past sexual assaults regardless of gender and include:

- immediate crisis support including crisis intervention, provision of information, counselling, advocacy, liaison with the department on child protection matters, police, forensic and other medical personnel, and coordination of support
- follow-up, longer-term counselling, advocacy and support
- information regarding options and rights within the legal system
- information regarding medical options, including follow-up medical treatment
- assistance to negotiate the management of sexually transmitted infections and/or pregnancy arising from the assault
- assistance in the management of other practical consequences of the assault such as emergency housing and compensation
- support and information to non-offending family members and support people.

In addition to the above activities, centres against sexual assault also provide community education, training and specialist consultation services to relevant individuals and services to facilitate meeting the broader needs and concerns of victim/survivors of sexual assault.

### 3.8. Forensic medical examination

In some instances, the police may suggest that the Victorian Institute of Forensic Medicine is contacted to provide a forensic medical officer, free of charge, to examine the victim. The Victorian Institute of Forensic Medicine provides clinical services and medical advice in the investigation of violent crimes and other offences.

The examination of people who have been sexually assaulted is a specialised area, and the institute provides a 24-hour service for attendance when requested by police or hospital staff. In this instance, the forensic medical officer or forensic nurse examiner will:

- assess and treat any immediate medical needs
- undertake tests for sexually transmitted infections and pregnancy, if appropriate
- collect evidence for use in the investigation and possible prosecution.

Medical needs are a priority in cases of recent sexual assault (within 72 hours). Often victims/survivors do not report assaults immediately, so time will often have been lost that may

have an adverse impact on the victim/survivor's health or the gathering of evidence. For adults, such an examination will often take place at a sexual assault crisis care unit.

For children (under 18 years) the Victorian Forensic Paediatric Medical Service should be contacted. Forensic services to children will typically be provided through the Gatehouse Centre (Royal Children's Hospital), South East Centre Against Sexual Assault (SECASA at Monash Medical Centre) in the metropolitan area or the nearest crisis care unit in divisional areas.

In relation to physical assault, forensic medical assessment of physical injuries may provide the only objective evidence of events. Injuries should be documented accurately and interpreted by medical officers with forensic training. The Victorian Forensic Paediatric Medical Service will provide this service to children.

### 3.9. Assist the police

The police should be assisted in conducting their investigation. The investigation may involve the police taking photographs of any physical injuries. The police may need the carer/worker's assistance to explain this procedure to the client.

In relation to preserving evidence of sexual assault, it is helpful to:

- encourage the victim not to shower or change, or, if the victim feels they must shower or change, ask them to put the clothing they were wearing at the time of the assault in bags, which should be sealed, labelled and secured and
- where possible, lock the door to the room or restrict access to the area where the assault occurred so any physical evidence inside that area remains undisturbed.

It is not necessary for a victim to decide immediately about whether to be involved in a police investigation and/or prosecution. People may be distraught in the immediate aftermath of an assault and sometimes change their minds later. Some evidence, however, will only be present in the immediate period following assault. Forensic evidence collected at this time will assist police investigation, should the victim wish to proceed at a later stage.

## 4. Where a client is the alleged victim

This section outlines the response requirements where the client is the alleged victim of an assault.

### 4.1. Inform the client of the process

In order to assist the client to make an informed decision to participate in the police investigation, the following information must be provided to the client:

- The matter will be or already has been reported to the police.
- The police may investigate the incident.
- The police may want to interview the client and take a statement. The client may choose whether or not to participate in the police investigation.
  - Clients with a cognitive disability or a mental illness must have an independent third person present during the interview. The role of the independent third person is to facilitate communication, ensure that the client understands his or her rights, and to support the client. Police are responsible for arranging the independent third person..
  - Departmental and funded agency staff should not act as the independent third person.
  - Where the alleged victim is under 18 years of age, he or she must have a parent, guardian or an independent person present when a statement is being taken. The role of the independent person is to provide support to the client, and ensure that their evidence is accurately recorded. If the young person has a cognitive disability, then an independent third person rather than an independent person should be present.

Please refer to the glossary (section 10) for more information on independent third persons and independent persons.

- The police will decide whether or not to proceed with charging.
- If the matter is taken to court, the client will most likely be required to give evidence.

### 4.2. Support and advocacy

The response by staff to a client's disclosure of assault can be central to the client's ongoing safety and their recovery from the trauma of assault.

Following an allegation of assault, it is important to:

- listen to and support the client
- reassure the client that they did the right thing by talking about the assault
- ensure the client, and others, immediate safety, health and well-being needs are met such as obtaining medical attention and referral to other specialist/victim support services
- ensure the client's specific support needs are addressed including access to communication aides and resources
- tell the client what you plan to do next

- with the client's consent, engage family, significant others, an independent key support person and/or advocate to support the client and advocate on behalf of the client and ensure their rights are respected.

A key support person may include a family member, significant other, or advocate who are independent of the perpetrator and/or service. The role of the key support person is to provide support and advocacy, and ensure client's rights are respected in relation to any subsequent investigation or action taken. A key support person should be someone who preferably knows the client well and has their trust.

Specialist/victim support services may include crisis care, counselling, advocacy, legal information and advice.

#### 4.2.1. Supporting client through the justice process

Clients will be supported through the justice process, including police investigation, prosecution and crimes compensation processes as appropriate. This may include:

- ensuring the client has access to appropriate communication aides and tools to facilitate disclosures and the provision of evidence
- ensuring the client has access to a key support person of their choosing
- alerting police to the need for an independent third person or independent person and the client's particular communication support needs, and the need for timely interviews to facilitate the recall of information
- facilitating arrangements with police for interviews and examination of evidence
- facilitating arrangements with specialist support services.

In the case of sexual assault, with the client's consent, staff should consider contacting the Centre Against Sexual Assault, to support the client during this process and ensure the client does not feel pressured to act in a particular way.

It is acknowledged that some discussion may be required to establish safety and a basic understanding of what has occurred. If the client needs to talk about what happened, listen and support the client and reassure the client that they did the right thing by talking about the assault

Under no circumstances, however, should an advocate, independent person, independent third person or staff member interview the client about the allegation—that is the role of police. Centres against sexual assault (CASAs) have an agreement with the Office of the Public Advocate that Centre Against Sexual Assault counsellors/advocates can act as an independent third person for sexual assault medical examinations and crisis care unit presentations.

#### 4.2.2. The client has complex communication needs

A person with complex communication needs is someone who does not speak, whose speech is difficult to understand and/or someone who has difficulty comprehending and processing what is being said to them. This may require the person to communicate in different ways.

Where the client uses an alternative form of communication, such as symbols, signs or augmented/facilitated communication, an independent third person can usually assist the client to communicate with the police.



### 4.3. Notification of next of kin or guardian

In the following sections, senior staff member refers to the most senior staff member in the relevant work area, such as a house or unit, present at the time that an incident occurs or to whom an allegation is reported.

If the alleged perpetrator is the next of kin or legal guardian, the staff member must ensure that the immediate needs of the client and an appropriate planned response are undertaken.

#### 4.3.1. The client is under 18 years and receiving disability services and/or youth justice services

The senior staff member must ensure that the next of kin or guardian is contacted.

They must explain to the next of kin or guardian: the nature of the allegation; the standard procedure for reporting allegations to the police; that the client may choose whether or not to participate in the police investigation; and any action taken by staff since reporting the allegation. The next of kin or guardian should be asked if they wish to be present at the interview.

#### 4.3.2. The client is over 18 years and receiving disability and/or youth justice services

It is the client's decision whether or not to inform the next of kin of the allegations. In the case of a client with a cognitive disability, where a decision is made not to advise the next of kin, it should be clearly documented how the client demonstrated that they made an informed decision. If the client chooses to notify next of kin, every attempt should be made to assist the client to make contact. If the client is unable to make an informed decision regarding contact and the client does not have an appointed guardian, the senior staff member should contact the next of kin as appropriate.

#### 4.3.3. The client has a legal guardian

The senior staff member must ensure that the legal guardian is contacted. They must explain the nature of the allegation, the standard procedure for reporting allegations to the police, that the client may choose whether or not to participate in the police investigation and any action taken by staff since reporting the allegation.

The guardian should be asked if they wish to be present while the client's statement is being taken.

#### 4.3.4. The client is on a guardianship to Secretary order

The senior staff member must contact the client's allocated case worker and explain the nature of the allegation, the standard procedure for reporting allegations to the police, that the client may choose whether or not to participate in the police investigation and any action taken by staff since reporting the allegation.

The case worker should be asked if they wish to be present while the client makes their statement; however, the case worker's participation in the interview is ultimately at the discretion of the police.

For clients within a youth justice custodial facility, the senior staff member will usually ensure that the next of kin or guardian is contacted. The senior staff member will explain the nature of the allegation, the standard procedure for reporting allegations to the police, that the client may choose whether or not to participate in the police investigation and any action taken by staff since reporting the allegation.

#### 4.3.5. The client is on a custody to Secretary order

The senior staff member will usually ensure that the next of kin or guardian is contacted. They will explain to them the nature of the allegation, the standard procedure for reporting allegations to the police, that the client may choose whether or not to participate in the police investigation and any action taken by staff since reporting the allegation. The next of kin or guardian should be asked if they wish to participate in the interview.

#### 4.3.6. A client receiving child protection or youth justice services does not wish their next-of-kin or guardian to be contacted

If the client is a young person who does not wish their next of kin or guardian to be notified, this should be discussed with the departmental child protection manager in the division or the youth justice custodial centre general manager. A decision in relation to notification will need to consider factors including the client's age and capacity, where they are living and their best interests. If necessary, legal advice should be sought, and if a decision is taken not to notify the next of kin or guardian, this must be clearly documented and placed on the client's file.

### 4.4. Clients from Aboriginal and Torres Strait Islander or culturally and linguistically diverse communities

For clients who are from culturally and linguistically diverse communities or from Aboriginal and Torres Strait Islander communities, staff should consider referring the client to specialist agencies or staff for additional support. For example, youth justice custodial centres have Aboriginal and Torres Strait Islander support workers and cultural support workers. It may also be necessary to arrange an interpreter.

#### 4.4.1. Clients from Aboriginal and Torres Strait Islander communities

Staff should facilitate an integrated, holistic approach with other staff or service providers, which may include accessing both mainstream and local Aboriginal and Torres Strait Islander support services. The client may not want to access the Aboriginal services located in the local area where they reside. Where this is the case, staff should support the client to access services outside of their local area. Appropriate services may include the Aboriginal and Torres Strait Islander Corporation Family Violence Prevention and Legal Service or the Victorian Aboriginal Health Service.

#### 4.4.2. Use of an interpreter

Where the client uses a language other than English, an interpreter of the same sex as the client should be arranged as soon as practicable to interpret for the client, police and other persons involved in the process. Contact the Victorian Interpreting and Translating Service (VITS) on (03) 9280 1955 (24 hours, seven days a week).

Some victims may be reluctant to speak to an interpreter because they fear that what they say may be passed on to their local community. In this case, it is possible to request a telephone interpreter from another state, or to not disclose the victim's name to the interpreter. When using an interpreter directly, consideration should be given to arranging an interpreter who is not associated with the client or his or her immediate cultural community.

sign language interpreter (preferably the same sex as the victim) may be needed to assist in communication with a client who is deaf. Interpreters can be obtained via Victorian Interpreting and Translating Service (VITS).

For further information, refer to the *Language Services access guide* at <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/language-services-access-guide>

#### 4.4.3. Culturally-specific Centre Against Sexual Assault services

Centre Against Sexual Assault (CASA) is the lead agency in providing support services to all victims of sexual assault and should be contacted to arrange culturally-specific services for victims from culturally and linguistically diverse communities.

#### 4.5. Care plan /support plan

Agreed actions for the client immediate and ongoing needs must be recorded on the client's care plan /support plan. This must include:

- steps being taken to assure the client's safety and wellbeing in the future
- treatment or counselling the client may access to address their safety and wellbeing
- modifications in the way services are provided (for example, same gender care or placement)
- how best to support the client through any action the client takes to seek justice or redress including making a report to police
- any ongoing risk management strategy required where this is deemed appropriate.

#### 4.6. Client's right to complain

The client has a right to complain about services funded by the department, and they and or their advocate should be alerted to the department's complaints resolution process and external complaints bodies (for example, the Disability Services Commissioner, Commissioner for Children and Young People and/or the Ombudsman Victoria).

## 5. Where a client is the alleged perpetrator

### 5.1. Police involvement and informing the client

Staff must consult with police about whether to inform the client of the report to police (see section 3.5). The police may want to interview the client and take a statement. Clients with a cognitive disability must have an independent third person present during the interview, and this will be arranged by police. Where the client is under the age of eighteen years, an independent person must be present during the police interview.

### 5.2. Legal representation

Staff must contact the service most directly responsible for the client's care who will ensure that the client has legal representation and is assisted during the investigation and hearing. For a client with a disability who has no appointed case manager, the departmental intake and response for access to disability supports should be contacted in relation to legal representation. Further information can be found at <http://www.dhs.vic.gov.au/for-individuals/disability/start-here/access-to-disability-supports>.

### 5.3. Notification of next of kin or guardian

The client's next of kin or guardian should be notified of the alleged assault following the instructions set out in section 4.3.

### 5.4. Support the client

The client's worker/case manager should ensure the client is referred for counselling and appropriate intervention. Under no circumstances should an advocate, independent person or independent third person or staff member interview the client about the allegation—that is the role of police. It is acknowledged however that some discussion with the client may be required to establish safety and a basic understanding of what has occurred.

Following an allegation of assault, it is important to:

- listen to and support the client
- ensure the client, and others, immediate safety, health and well-being needs are met such as obtaining medical attention and referral to other specialist support services
- ensure the client's specific support needs are addressed including access to communication aides and resources
- with the client's consent, engage family, significant others, an independent key support person and/or advocate to support the client and advocate on behalf of the client and ensure their rights are respected.

A key support person may include a family member, significant other, or advocate who are independent of the perpetrator and/or service. The role of the key support person is to provide support and advocacy, and ensure client's rights are respected in relation to any subsequent

investigation or action taken. A key support person should be someone who preferably knows the client well and has their trust.

### 5.5. Care plan/support plan

Agreed actions for the client immediate and ongoing needs must be recorded on the client's care plan /support plan. This must include:

- steps being taken to assure the client's safety and wellbeing in the future
- treatment or counselling the client may access to support their wellbeing
- modifications in the way services are provided (for example, same gender care or placement)
- how best to support the client through any action to prevent recurrence
- any ongoing risk management strategy required where this is deemed appropriate.

### 5.6. Client's right to complain

The client has a right to complain about services funded by the department and they and or their key support person/advocate should be alerted to the department's complaints resolution process and external complaints bodies (for example, the Disability Services Commissioner, Commissioner for Children and Young People and/or the Ombudsman Victoria).

## 6. Reporting within or to the department

### 6.1. Complete a client incident report

Under the departmental *Critical client incident management instruction: technical update 2014*, all:

- Category One client incident reports must be sent to the department designated divisional office as soon as possible and at the latest within one working day of the incident or within one working day from first being told of the incident
- Category Two client incident reports must be sent to the department designated divisional office as soon as possible and at the latest within two working days of the incident or two working days from first being told of the incident.

To assist staff in accurate categorisation of reports, further advice is provided regarding allegations of physical and sexual assault in the *Critical client incident management instruction: technical update 2014*

### 6.2. External monitoring

#### 6.2.1. The Disability Services Commissioner

The department has established a protocol for the provision of client incident reports relating to allegations of staff to client assault or unexplained injuries within disability services to the Disability Services Commissioner for independent monitoring, review and advice on client specific issues and trends.

#### 6.2.2. Commission for Children and Young People

The department has an established protocol with the Commission for Children and Young People for the provision of client incident reports for children in out of home care. The commission monitor critical incidents reports to identify any emerging or recurring themes, trends and issues.

### 6.3. Criminal injuries compensation and victim support

Application for compensation from the Victims of Crime Assistance Tribunal may be pursued by the client or their legal administrator after the incident has been reported to the police. Departmental staff should consult the Legal Services Branch about potential applications on behalf of children who are subject to Guardianship to the Secretary Orders.

In relation to sexual assault, a centre against sexual assault counsellor/advocate can support clients who wish to pursue compensation.

The victim may also wish to contact the Victims of Crime at <http://www.victimsofcrime.vic.gov.au/> and/or the Court Network on 1800 681 614 or at <http://www.courtnetwork.com.au/>.

### 6.4. Debriefing for staff and clients

After a serious and traumatic incident, it is likely that high levels of stress will be experienced by those connected with the incident.

### 6.4.1. Debriefing for staff

Staff who are witnesses or otherwise impacted by the event may require additional management support or counselling.

Support is available for departmental staff through the department's Critical Incident Response Management Service, by contacting the divisional Critical Incident Response Management Service co-ordinator.

The service aims to facilitate the recovery of individuals experiencing normal distress following an abnormal event. It aims to help people return to their pre-incident level of functioning as soon as possible.

Funded organisations are responsible for the welfare and support of their staff, including the appropriate provision of debriefing services. The Critical Incident Response Management Service can provide consultancy information to funded organisations to promote the understanding of debriefing and its appropriate application. Where an incident involves employees from both the department and an agency, all employees may benefit from a combined debriefing.

In relation to a sexual assault, the local Centre Against Sexual Assault can provide assistance with debriefing and secondary consultation.

General arrangements to support staff may include allocating a safe place for retreat, giving staff the option of being immediately and temporarily relieved of their duties, providing communication with families and offering to organise transport home.

### 6.4.2. Support and debriefing for clients who witnessed assaults

In the response to the incident it is important to ensure that other clients, particularly witnesses to the alleged event are supported.

Consideration should be given to the impact of the event on other clients and how they can be best supported. Clients, and particularly witnesses, may require extra support or counselling, or other modifications to services.

General arrangements to support clients may include allocating a safe place for retreat and communicating with families.

## 7. Where the alleged victim and the alleged perpetrator reside, attend or work in the same setting

### 7.1. Prevent further contact

After reporting to the police, every attempt must be made to ensure the safety of the victim and to prevent any further contact between the alleged victim and the alleged perpetrator.

### 7.2. Plan for relocation

Thorough consideration must be given to the relocation of the alleged victim, the alleged perpetrator or, in rare cases, both parties. In principle, the alleged perpetrator should be moved from the immediate work area, such as a house or unit, while an investigation is undertaken.

However, circumstances will differ and it may be more appropriate to move the alleged victim. In deciding who must be moved, consideration must be given to the length of time the alleged victim has been residing in the facility, and whether or not he or she wants to remain in or move from the facility. Action taken must be based on consideration of the best interest of the alleged victim. In the instance in which it is decided the victim should be moved, it should be clearly articulated to them that they are not being moved because they have done something wrong. Decisions to relocate or not relocate people should be documented clearly for future reference.

If the alleged perpetrator is to remain in the same setting, it is essential to plan for the safety of other clients and staff. For clients receiving child protection services this will require area director approval (see section 6.5).

#### 7.2.1. Relocation of a client with a disability

If the person subject to relocation resides in a residential accommodation service the requirements under Part 5, Sections 74 – 77 of the *Disability Act 2006* and the *Strengthening rights in residential services policy* (May 2010) must be complied with.

For clients with a disability, a decision to remove a person from a setting must be made on an individual basis in consultation with senior divisional management. When a decision is taken that a situation warrants a person being moved from the setting, it will be necessary to attempt to obtain the person's or their guardian's consent for this to occur.

If the person does not already have a guardian and: in the opinion of the most senior staff person present, is unable to give consent, or refuses to give consent, and it appears to the most senior staff person present that they will be at further risk of harm by remaining in the facility, the most senior staff person on duty should contact the next of kin and/or guardian to seek agreement to the proposed move and document the outcome.

When the consent of the person, guardian or next of kin is not provided or cannot be obtained and the relocation of the person is reasonably required to prevent the foreseeable risk of serious harm, the person may be relocated provided:



- the most senior staff person has consulted with the Office of the Public Advocate
- advice has been sought from the appropriate local management
- where the person has a designated advocate, their advice has been obtained where possible.

Where immediate action is required to prevent serious harm in emergency situations, these requirements may be waived, if, in the opinion of the most senior staff person present, a delay in taking action would lead to serious harm.

## 8. Where a staff member is the alleged perpetrator

Sexual and physical assaults are crimes. Apart from more general provisions, the *Crimes Act 1958* has specific provisions relating to the sexual exploitation of young people and people with mental illness or cognitive disability.

- Sections 48 and 49 prohibit a person from participating in an act of sexual penetration or indecent acts with a person aged 16 or 17 to whom he or she is not married and who is under his or her care, supervision and authority. Consent is not a defence.
- Section 51 prohibits a carer from taking part in sexual acts with people in their care who have a cognitive disability. Consent is not a defence.
- Section 52 prohibits sexual acts between residents with cognitive disability and carers in residential facilities. Consent is not a defence.

### 8.1. Follow departmental or funded organisation disciplinary procedures

After reporting to the police, the line manager must be immediately notified of the report. The manager must then notify the appropriate senior manager.

#### 8.1.1. Departmental staff

In relation to a departmental staff member, while the police investigate the matter, the appropriate department senior manager will instigate any necessary discipline procedures in accordance with the relevant award agreement, including redirecting the staff member to alternate duties that do not involve direct client care or support or standing the staff member down.

It is important that any steps taken do not undermine action that police may instigate. Refer to the *Code of conduct for Victorian public sector employees* for further information.

#### 8.1.2. Other staff

Where an allegation is made against a staff member or volunteer carer of an organisation providing services funded by the department, the response should refer to program guidelines and the organisation's disciplinary procedures, including redirecting the staff member to alternate duties that do not involve direct client care or support or standing the staff member down.

#### 8.1.3. Quality of care/quality of support reviews

For clients receiving protection services, also refer to *Guidelines for responding to quality of care concerns in out-of-home care* (December 2009).

For clients receiving disability services, a quality of support review must also be undertaken.

## 9. Where a staff member is the alleged victim of a physical or sexual assault by a client

### 9.1. Access to medical and support services

The senior staff member must ensure that the alleged victim has access to medical attention and support services (for example, debriefing, Centre Against Sexual Assault), and that a safe working environment is maintained. It is essential that the alleged victim is given maximum support and assistance. Support should be meaningful and delivered with care from managers and colleagues. General arrangements may include allocating a safe place for retreat, giving staff the option of being immediately and temporarily relieved of their duties, providing communication with families and offering to organise transport home.

Managers are also responsible for providing ongoing support to staff exposed to physical or sexual assault.

### 9.2. Follow incident, disease, injury, near-miss, accident and police reporting procedures

After reporting to the police, the line manager must be immediately notified of the incident. The manager must investigate the incident and follow incident reporting procedures, including the development of strategies to minimise the likelihood of recurrence. For departmental staff a Disease, Injury, Near-Miss, Accident (DINMA) form must be completed.

Should the staff member be opposed to reporting the matter to police, this must be discussed with the senior departmental program manager in the division. Should a decision be made not to report to police, this must be clearly documented in the Disease, Injury, Near-Miss, Accident form and the Client Incident Report form.

Worksafe Victoria must be immediately notified of any 'notifiable incident' occurring in the 'workplace as required under the *Occupational Health and Safety Act 2004*. Notifiable incidents apply to any person in the workplace including staff, clients and visitors. To notify Worksafe immediately call 132 360. In addition to immediate notification, the employer must provide a written record of the incident to WorkSafe within 48 hours of becoming aware of an incident.

## 10. Glossary

**Care/support plan:** This refers to the individualised plan for a particular client.

For a person with a disability, a support plan describes the person's goals and strategies, and describes how the support from the disability service provider is intended to address those goals. An individual's support plan may be titled an individual support plan or a person centred plan.

**Carer:** carer is a volunteer or staff member who cares for clients, usually in a residential setting.

**Client:** Children, young people or adults who receive services delivered or funded by the department.

**Cognitive impairment:** Encompasses a range of disabilities that affect a person's ability to understand and process information. Includes intellectual disability, acquired brain injury, mental illness and neurological disorders such as dementia.

**Disability:** For the purposes of this instruction, disability is as defined in the *Disability Act 2006*.

**Independent person:** Independent persons are trained to assist young people (under the age of 18 years) and act in the absence of a parent or guardian.

**Independent third person:** Independent third persons are trained to assist people with intellectual and other cognitive disabilities during an interview or when making a formal statement to Victoria Police. The person may be a victim, witness, or suspect. The role of the independent third person is to facilitate communication, assist the person to understand their rights, and support the person throughout the process.

**Key support person:** A key support person may include a family member, significant other, or advocate who are independent of the perpetrator and/or service. The role of the key support person is to provide support and advocacy, and ensure client's rights are respected in relation to any subsequent investigation or action taken. A key support person should be someone who preferably knows the client well and has their trust.

**Physical assault:** Actions, or attempted actions, that involve the use of physical force against a person that result in or had the potential to cause harm.

**Sexual assault – rape:** Alleged penetration or attempted penetration (anal, oral or vaginal) through the use of physical force, intimidation and/or coercion without the other person's consent.

**Sexual assault – indecent:** Unwanted sexual actions forced upon a person against their will, through the use of physical force, intimidation and/or coercion.

**Sexual penetration:** Introduction (to any extent) by a person of his penis into the vagina, anus or mouth of another person. Introduction (to any extent) by a person of an object, or another part of his or her body (other than the penis) into the vagina or anus of another person, other than in the course of a procedure.

**Sexual Offences and Child Abuse Unit:** Specialised Victoria Police units that provide a response to adult victims of sexual assault and child victims of sexual or physical abuse.

**Weapon:** Thing designed, used or useable for inflicting bodily harm, for example, a knife or brick.

**Worker:** A staff member who supports clients.