

## **Notification of Death, Serious Injury, Critical Incident, Allegation of Abuse in Care**

### **DEPARTMENT FOR COMMUNITY DEVELOPMENT**

#### **DIRECTOR GENERAL'S INSTRUCTION NUMBER: 59**

<b>TITLE:</b>	Notification of Death, Serious Injury, Critical Incident, Allegation of Abuse in Care
<b>DATE OF EFFECT:</b>	15 February 2004
<b>DIRECTORATE:</b>	Community Development and Statewide Services
<b>OFFICER RESPONSIBLE:</b>	Ken Monson, Director Operational Policy Protecting Children, Young People and Families
<b>ENQUIRIES:</b>	Duty of Care Registrar

This instruction replaces DGI 4 and DGI 53. It complements [DGI 46](#) "Notification of a Child Death by the State Coroner and Exchange of Information". "Notification of a Child Death by the State Coroner and Exchange of Information".

The Department for Community Development has a mandate under the Child Welfare Act 1947 to promote the safe care of children and where necessary to protect them from harm. The Department has a significant role and special responsibilities regarding children in its care.

The Department also has a role in advising or assisting adults who, as children or young people, were subjected to abuse whilst wards or placed in care approved by the Department.

#### **THIS INSTRUCTION REQUIRES OFFICERS TO PROVIDE IMMEDIATE NOTIFICATION IN THE EVENT OF:**

- death
- serious injury
- critical incident
- allegation of current abuse
- allegation of past abuse in care
- allegation of abuse prior to care.

#### **IN RESPECT TO:**

- all wards (regardless of care arrangements)
- all non wards who are in the Department's care
- young people and adults who as children were wards or placed in care approved by the Department.

Notification is required to ensure:

- all children or young people subject to a notification while in Departmental care are provided with a timely response, according to case practice guidelines, to ensure their

circumstances are fully assessed or investigated, and to confirm their care plans are appropriate and the care arrangements are safe and protective

- children's and young peoples' legal rights are met
- the Department has discharged its legal responsibilities under the Child Welfare Act 1947 and the Bennett Principle (see [Glossary](#))
- where the notification relates to an allegation by a Departmental carer or officer, there is an immediate investigation to determine a) that person/s' suitability to continue to work with children and b) potential risk to other children/young people who have been in the Departmental placement or identified as having contact.

## RESPONSIBILITIES AND PROCEDURES

The following responsibilities and procedures apply to all notifiable incidents. Refer to the [Glossary](#) (attached) for the definitions of notifiable incidents.

In respect to abuse in care notifications, **only incidents that meet the criteria for classification as a Child Maltreatment Allegation requiring a child protection response** should be treated as abuse in care and a notification initiated.

### Role of Caseworker/Service Delivery Officer

- advises the Team Leader and Manager immediately
- completes a notification within 24 hours using the CCSS Notification Screen, which will automatically alert the Duty of Care Unit. Ensures that a copy of the notification screen is printed, signed by the Team Leader and Manager and placed on the client file
- ensures the parents and carers (if applicable) are made aware of the incident as soon as possible in respect to death, serious injury or a critical incident. For allegations of abuse in care, parents/carers are to be informed (where and when appropriate) as part of the case plan developed in response to the circumstances.

At the time of the initial notification, minimal assessment and/or investigation will generally have occurred. An outcome report [Form 466](#) is to be completed within **10 days** of the initial notification and forwarded to the Duty of Care Registrar. In the case of a Child Maltreatment Allegation [Form 204](#) (only) must be completed and forwarded to the Duty of Care Register immediately the investigation is finalised.

The outcome report will provide information about:

- result of the assessment and/or investigation
- person assessed to have caused harm, if known
- child's placement/care arrangements (including the carer's status)
- summary of action taken and services provided
- assessment of the safety or potential risk to other children in the placement, or other children previously placed with the carer
- recommended action plan.

In the event that Legal Practice Services makes a referral for independent legal advice, the Caseworker/Service Delivery Officer is responsible for:

- the provision of supporting information to Legal Practice Services for proper legal instruction
- assisting the child/young person in relation to legal referral (eg appointments, transport).

### **Role of the Team Leader/Manager**

- rates the notification tasks as a high priority
- quality assures the notification
- ensures the completion of the case practice procedures for assessment or investigation and quality assures the outcome reporting
- ensures that an assessment of the safety and wellbeing of other children who may be at risk has been undertaken including a review of the placement's status (if applicable)
- ensures the provision of services and support for the child, young person or adult
- ensures that information is given to the child, young person or adult regarding his/her rights, for example
  - the Consumer Advocacy Service
  - independent legal representation
  - access to support and treatment services
- facilitates guidance from the relevant Senior Professional Officers/Advisers in relation to case practice, cultural and psychological matters as appropriate
- quality assures information to Legal Practice Services in the event of a referral for independent legal advice and ensures support to the child/young person is being provided.

### **Role of Duty of Care Registrar**

- receives all notifications from Caseworkers/Service Delivery Officers relating to the death, serious injury, allegation of abuse or critical incident in respect of any ward (regardless of care arrangements) or a non ward who is placed in Departmental care, and any person who alleges past abuse while in a Departmental placement
- immediately forwards notifications to :
  - Divisional Director
  - Executive Director
  - Director General
- quality assures notification procedures for duty of care compliance
- collates and reports statistical information relating to notifiable incidents
- provides outcome reports and other supporting documents to Legal Practice Services to determine if a child, young person or adult should be referred for independent legal advice. If a decision is made not to refer, the Director Legal Practice Services will sign this decision and a copy will be forwarded to the Caseworker/Service Delivery Officer to be placed on the client file
- ensures the legal rights of the child, young person or adult are being addressed through notification and proper coordination between Service Delivery Officers and Legal Practice Services regarding legal matters
- ensures all possible exchanges of information relevant to child deaths
- reports qualitative and quantitative analysis to inform policy and practice development.

### **Role of the Director Legal Practice Services**

- assesses information to determine whether a child, young person or adult is referred for independent legal advice
- meets the Bennett Principle requirement by referral with proper legal instruction to competent and independent legal practitioners
- assumes a coordinating role for any litigation associated with the death, injury or abuse of a ward or child or young person in care, or an adult who was abused as a child or young person while in Departmental care, by providing legal advice to Service Delivery Officers. This includes processing Criminal Injury Compensation matters
- ensures effective liaison with Caseworkers/Service Delivery Officers to obtain supporting evidence in order to provide proper written legal instruction
- ensures that referral for independent legal representation is made within the prescribed timeframes as set out in the Limitations Act 1935 & Crown Suits Act 1947 (see [Glossary](#)).

### **Role of the Executive Director Community Development and Statewide Services**

- if required, arranges an internal review by a senior officer who has not been involved in the case to make recommendations for consideration by the Director General
- quality assures information prepared for the Director General.

### **Role of the Director General**

- may upon receipt of a report initiate an external review of a case
- will sign off on all formal communication between the Department and the Minister in relation to notifiable incidents.

### **Departmental Responsibilities and Procedures in relation to ex-wards and adults who allege they were abused as children whilst in the Department's care**

When a child, young person or adult alleges or reports past abuse or injury whilst a ward or as a child placed in care approved by the Department, the following considerations and requirements apply.

- Notification should proceed according to the process described in this Instruction
- Investigation of abuse as a criminal offence is a police matter. However, when an ex-ward or adult alleges that as a child he/she was abused whilst placed in care by the Department, a decision needs to be made on the appropriateness of the Department to investigate the allegation. This decision will depend on factors such as the age of the (now) adult, when the abuse is alleged to have occurred, whether other children may still be at risk or were at risk, and whether an investigation is feasible. This decision should also take account of the person's wishes
- If the alleged person responsible for the abuse is (or was) a Departmental employee or foster carer, the Department has a clear responsibility to investigate, as a matter of priority, whether the abuse did occur and to assess the suitability of the Departmental officer or foster carer to continue to or resume working with children in the future. Refer to [Administrative Instruction 522](#): Procedures to Deal with Allegations of Maltreatment Against Departmental Employees and Foster Carers.
- The Caseworker/Service Delivery Officer must ensure where appropriate that a treatment or counselling service is offered. Where the use of non Departmental

services is indicated (for example, if the adult does not wish to use Departmental services, or to ensure the provision of independent advice) referral to another government department or agency, non-government agency, or private practitioner should be considered

- If a contract with a private practitioner is being considered, only those practitioners listed on the Private Practitioners' Register may be used in compliance to the procedures outlined in Chapter 9 Section 9.12 of the Case Practice Manual and [DG Instruction 5](#)
- If the decision is to provide or purchase clinical services for the person, this should occur "without prejudice". It should not be interpreted as the Department accepting legal responsibility for the alleged abuse having occurred. Caseworkers/Service Delivery Officers should seek advice from the Department's Legal Practice Services if clarification is required
- [Form 466](#) Outcome Report should be completed within 10 days for the Duty of Care Registrar.

**Jane Brazier**  
**DIRECTOR GENERAL**  
**15 February 2004**

## GLOSSARY

1. The **death** of a ward or a child in the care of the Department. A death in this circumstance may relate to a death from natural causes, eg as a consequence of a terminal illness ( [note 1](#)). For Coroner notified deaths refer to [DG Instruction 46](#).
2. A **serious injury** is defined as **an accidental injury** that is not linked to a Child Maltreatment Allegation. This may involve broken bones, dislocations, head injuries, burns, ingestion of poison or harmful substances, internal injuries, or any injury considered serious by a medical practitioner.

The above list of definitions relating to accidental injury is not exhaustive and serves as a guide only. If there is uncertainty consultation should occur with a Senior Field Officer Child Protection or the Duty of Care Registrar.

3. **Allegations of abuse in care** are those that fit the criteria of a child maltreatment allegation. The criteria for a Child Maltreatment Allegation is defined as when a child or young person:
  - may have been physically or emotionally harmed or injured
  - is at risk of **significant** physical or emotional harm or injury
  - may have been exposed or subjected to sexual behaviour or activities which are exploitative or inappropriate to his or her developmental level
  - may be the subject of **persistent** actions or inactions that are likely to result in the child's or young person's development being significantly impaired.

**Significant** refers to the extent of the impact on the health, mental health or emotional, physical, cognitive or social development of the child or young person.

**Persistent** refers to actions or inactions which may not be of a severe nature in any

one instance but where the cumulative effects result in a significant impact on the health, mental health, emotional, physical, cognitive or social development of the child or young person.

4. **Allegations of abuse prior to coming into care** refers to allegations of abuse that are made by a child currently in care, but relate to an incident that occurred prior to the child coming into care (Note: this matter may require follow up by the Department on behalf of the child/young person as a potential Criminal Injury Compensation claim).
5. **Allegations of past abuse in care** are those that fit the same criteria of a Child Maltreatment Allegation and relate to all ex wards and non wards (regardless of age) who as children or young people were placed in care by the Department, and who have now left care.
6. A **Critical Incident** is defined as an incident that does not fit any of the above categories but may affect the emotional or physical well being of a child or young person whilst in Departmental care eg self harm, missing person. This category must be used to provide notifications about a child or young person who is responsible for causing harm, as defined above ( [point 3](#)), to another child/young person.
7. **Duty of Care** is a duty to take reasonable care to avoid acts or omissions that can be reasonably foreseen to be likely to injure a person for whom the Department has a responsibility, or some relationship. A duty of care can be breached either by action or inaction. **Injury** refers to physical and/or psychological harm caused to a person because of the Department's unreasonable action or inaction.
8. **Bennett Principle** (Bennett v Minister of Community Welfare - High Court decision 1992) refers to the High Court's confirmation of the Department's responsibility and positive duty to refer a child or young person injured or abused whilst in Departmental care to a competent independent legal practitioner, with proper instruction, for legal advice. This duty may continue until it has been fulfilled. If this duty is not discharged and as a result the child or young person's potential claim against the Department or another party has become " *statute barred*" then he/she is likely to have a cause/right of action against the Department for the loss of this entitlement.
9. The **Limitation Act 1935** and the **Crown Suits Act 1947** set out the prescribed timeframes in which a person can issue legal proceedings against an individual or government. Under these Acts statutory limitation periods for actions against individuals differ from those in relation to government agencies, a Minister or the State.

Where an action is contemplated against an individual for whose actions the Director General, the Minister or the State are legally responsible, or against the Attorney General, the Minister or the State themselves, ordinarily the claim must be brought within 12 months from the incident irrespective of the child's age at that time. In other cases, the action may be brought within 6 years after the child turns 18.

**Note 1: In relation to Aboriginal deaths** - In some Aboriginal communities and in certain geographical areas, the use of a deceased person's first name is inappropriate and against local law and customs. Staff should seek advice from Aboriginal Officers or local Aboriginal agencies, or ATSIC or DIA as to whether this is the case and if so, what is the appropriate term to use in place of the deceased's first name.

FLOWCHART [click here](#)

## Related Policy Areas

- [DGI 18](#) Circumstances when Executive Directors Should be Notified Regarding Case Practice Matters
- [DGI 56](#) Procedures for Responding to Allegations of Child Maltreatment Made Against Providers of a Child Care Service
- [DGI 34](#) Substantiating Maltreatment, and Identifying a Person Believed Responsible for Maltreatment
- [DGI 44](#) Notifying Parents/Guardians of Intention to Interview, Examine or Apprehend Children and Decision Making Concerning Apprehended Children - Care and Protection Applications - Where Parents/Guardians Disagree With Interim Care Decisions
- [DGI 46](#) Notification of a Child Death by the State Coroner and Exchange of Information
- [Administrative Instruction 522](#) Procedures to Deal With Allegations of Child Maltreatment Against Departmental Employees and Foster Carers
- Section 18 of the [Administrative Procedures and Approvals in Casework](#) (pdf, 468kb)
- Sections 4.9, 4.10, 5.12, 8.4, 8.5, 12.5, 12.10 of the Case Practice Manual
- Reciprocal Child Protection Procedures (2002)
- Abuse in Care Protocol between Department for Community Welfare, its Carers, Placement Agencies & Carers

### Applicable forms:

Notification	CCSS Incident Notification - available from the CCSS Client History Screen
<a href="#">Form 466</a>	Follow up Outcome Report of the Death, Serious Injury, Abuse or Critical Incident Relating to a Ward, a Non Ward in Care, or an Adult Who Was Placed in Care as a Child by the Department
<a href="#">Form 204</a>	Child Maltreatment Allegation Investigation Outcome Report