Responding to allegations of physical or sexual assault
Departmental instruction
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1. Introduction

This departmental instruction sets out the management and reporting requirements relating to allegations of physical or sexual assault involving specified groups of clients or staff. It replaces the departmental instruction Reporting Allegations of Physical or Sexual Assault to the Police of June 1993.

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

1.1 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.

People aged fifteen to nineteen, for example, are four times more likely than the general population to be sexually assaulted, and together with those in the twenty to twenty-four year old age group, have the highest physical assault rates. People with a disability are more likely than the general population to experience abuse, neglect, and violence. Given the increased vulnerability of many of the department's clients to physical and sexual assault, staff must act on any allegations of assault as described in this instruction.

Physical assault usually involves the intentional harm to the body of one person by another. Victims of physical assault are more likely to be male than female; perpetrators are likely to be male.

Sexual offences usually involve the exercise of power by one person over another. They are most frequently committed by someone known to the victim. Such a breach of trust renders sexual offences particularly traumatic for those who experience them. Studies suggest that sexual assault is less likely to be reported to law enforcement agencies than any other type of violence against the person.

Most victims of reported sexual assault are female, and nearly all perpetrators are male. Prior experience of sexual assault is a strong predictor of becoming subject to future sexual assault.

Irrespective of gender, victims of sexual assault frequently experience negative outcomes, including dissociation, Post Traumatic Stress Disorder, depression and anxiety. Victims of physical assault frequently experience shock, numbness, fear, depression and anxiety.

1.2 Principles

The safety and wellbeing of departmental clients and staff is paramount.

The department has 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 not discretionary.

The department does not condone, and cannot be seen to condone assault.
1.3 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 police 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; and improve the processes of care and training of staff on the basis of this analysis.

The aims of this instruction are to:

• protect clients and staff from assault;
• support clients and staff who report allegations of physical or sexual assault;
• ensure duty of care requirements are met; and
• hold perpetrators of physical and sexual assault accountable for their actions.

1.4 Scope

This instruction contains a set of minimum standards for supporting victims and reporting allegations of physical or sexual assault to Victoria Police. The instruction must be followed in conjunction with the department’s Incident Reporting System, and will apply:

• in all programs where the client resides in a residential service directly managed by the department, such as juvenile justice centres, juvenile justice regional residential units, secure welfare, or disability accommodation services;
• where the child or young person is in out-of-home care (including respite care for clients with a disability);
• where the client has a disability and resides in a residential service funded by the department (including respite care);
• where the client has a disability and is receiving facility-based day programs either directly from the department or through a funded agency;
• where the client 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 an agency providing those services that has been funded by the department.

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 support the client to seek support and to make a choice 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 engage other services as appropriate (e.g. counselling, sexual assault counselling services, advocacy);

• A determination that a report to police is not made by the agency can only be made after consultation with senior agency management and where there is a planned referral pathway to appropriate services;

• Information regarding the obligations and requirements in relation to reporting allegations of assault must be made available to clients at initial contact.

If the client is within scope as described above, all allegations of physical or sexual assault must be responded to according to this instruction.

**Definition of out-of-home care**

Out-of-home care is the term used in Victoria when a child or young person is placed in care away from their parents. In Victoria, the vast majority of children and young people in out-of-home care are placed there following child protection intervention and in accordance with an order granted by the Children's Court. However, a small number of children and young people are placed in out-of-home care on a voluntary basis with no court order requiring them to live away from their parents. Out-of-home care includes:

• Residential Care
• Lead tenant accommodation
• Shared family care
• Home-based care, which encompasses
  - Foster care
  - Kinship Care
  - Permanent Care prior to finalisation

Out-of-home care includes both care directly delivered by departmental staff and care delivered by Community Service Organisations.

**Arrangements for home-based care and shared family care**

For these services, the *Guidelines for investigating allegations against home-based caregivers, Final draft March 2005* apply. It is expected these guidelines will be endorsed in mid-2005 and when this occurs the final endorsed guidelines will apply in these services.
Definition of disability

For the purposes of this Instruction, disability is defined as a disability attributable to an intellectual, sensory, physical or neurological impairment or acquired brain injury (or some combination of these) which is permanent or likely to be permanent, and results in substantially reduced capacity in at least one of the following:

- self-care or management
- mobility
- communication

requiring significant ongoing or long-term episodic support and which is unrelated to ageing.

Application of instruction in Alcohol and Drug Treatment Services and Supported Accommodation Assistance Programs (SAAP)

On occasion, a client in out-of-home care, or a client who usually resides in a residential service directly managed by the government, may be receiving SAAP services or Alcohol and Drug Treatment Services. In such instances, where an agency is aware of the client’s status (that is, that the client is from out-of-home care or resides in a residential service directly managed by government) all allegations of physical and sexual assault must be managed according to this instruction. The agency will act either directly or in collaboration with the primary support agency for the client. The agency that first becomes aware of the incident must follow through on the steps in this instruction, unless a more appropriate program or agency takes this responsibility. If the agency or program which first becomes aware of the incident is not the lead agency or agency with primary responsibility for the client, then they must ensure that the lead or prime agency is informed.

Minimum requirement

This instruction and its coverage represent the minimum standards for reporting and managing allegations of physical or sexual assault. Program areas may develop operational guidelines for implementation of the instruction, which take account of specific programmatic issues and needs.

1.5 Legislative and policy context

The instruction has been revised giving consideration to the following legislation and policies, which affect departmental programs. This instruction operates within these boundaries; however, safety is an overriding principle.

Program legislation

Children and Young Person’s Act 1989
Community Welfare Act 1970
Intellectually Disabled Persons’ Services Act 1986
Disability Services Act 1991
Occupational Health and Safety

Occupational Health and Safety Act 1985

Employment legislation

Workplace Relations Act 1996
Public Administration Act 2004

Privacy legislation

Information Privacy Act 2000
Health Records Act 2001

Justice legislation

Crimes Act 1958
Evidence Act 1958

Departmental policies, procedures, and key documents

Code of Conduct for the Victorian Public Sector
Values
Duty of care
Health, Safety and Wellbeing Policy
Incident reporting
Managing Discipline Policy
Occupational Assault Reduction Policy
Prevention and management of occupational assault
Resolving claims of unacceptable behaviour policy
Service standards

1.6 Definitions

Physical assault

For the purposes of this Instruction, physical assault is generally defined as the application of force, which causes physical injury requiring medical attention. Medical attention means treatment by a medical practitioner.

Physical injury is defined to include (but is not limited to) internal injuries, dislocated or broken bones, cuts, bruising, welts or burns. These may be caused by hitting, throwing, shaking, suffocation, strangulation, sexual assault, poisoning, mutilation, or assault with a weapon. Assault may also include other actions, including spitting, or serious threatened or attempted assault (for example, involving a weapon) that results in discomfort or pain.

Some incidents that do not cause physical injury may still constitute an assault under the law, but under this Instruction can be dealt with most appropriately through departmental incident reporting. That is, some minor incidents involving, for example, one client shoving another with no injury caused, may be dealt with through incident reporting rather than being reported to Police. It is important that such incidents are
documented and responded to appropriately, for example, through a behaviour management plan and monitoring. Assaultive behaviour of any type is unacceptable, regardless of the intent of the person committing the violence.

**Sexual assault**

Sexual assault includes rape, assault with intent to rape and indecent assault. Indecent assaults are assaults that are accompanied by circumstances of indecency. 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. This definition is consistent with the *Victorian Crimes Act 1958* (s35-60A).

Consent is not a defence to some sexual offences. A person who takes part in an act of sexual penetration with a child under the age of 16 is guilty of an indictable offence, unless the child is aged between 10 and 16 and the two people taking part in the act are married to each other. If the two people are not married, and the child is aged more than ten years, then consent is not a defence unless

- the accused believed on reasonable grounds that the child was aged 16 or older;
- the accused was not more than 2 years older than the child; or
- the accused believed on reasonable grounds that they were married to the child.

**Client**

Throughout this document, the term client 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, or residents in other contexts. Clients may be children, young people, or adults.

**1.7 Compulsory requirement**

This instruction will apply in each of the following categories:

- 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; and
- Allegation of assault of a staff member, visitor, other non-staff member, or member of the community by a client.

It should be noted that an allegation of assault of a staff member by another staff member is not included in this Instruction, given that there are existing procedures for dealing with such instances. For departmental staff see policies listed in section 1.5 above; for funded sector staff refer to agency guidelines.
Responding to allegations of physical or sexual assault

All allegations of physical or sexual assault as defined for the purposes of this document must be reported to the Police, whether or not the victim has consented to the matter being reported. All assaults as defined constitute category one or category two Incidents under the department’s Incident Reporting Instruction. The only exceptions are incidents as described in:

- section 1.6, paragraph 3 (minor incidents such as shoving between clients);
- section 7.1.3 paragraph 2 (inappropriate touching by a disability client who lacks understanding of the behaviour); and
- section 7.1.4 (exposure in a public place by a disability client in some contexts).

In the case of the three items listed above, a category three incident report must be completed and a behavioural management intervention implemented and monitored.
2. Consent to reporting the allegation

Reporting of allegations of assault to the Police is required whether or not the alleged victim has consented to the matter being reported. The alleged victim may choose not to participate in the Police investigation.

Both the Information Privacy Act and the Health Records Act contain provisions for the disclosure of personal information relating to criminal offences. The information handling procedures outlined in this document have been developed in consultation with the department’s Privacy Unit and Legal Services Branch.
3. Reporting the allegation to police

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 incident;
- a staff member or volunteer suspects that an incident has occurred, for example, 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 behaviours, or persistent and inappropriate sexual play); or
- A client complains of physical symptoms or a staff member observes symptoms (this might include abdominal pain, sexually-transmitted disease, or pregnancy).

The final two points above are particularly applicable to clients with a disability. Where a staff member considers that a client’s behavioural changes or symptoms such as abdominal pain 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 victim, and they must be given maximum support and assistance.

Allegations of assault should always be treated seriously. The victim’s feelings about themselves may be influenced by initial reactions to their allegation. If the victim senses a horrified or disbelieving response, this may reinforce and perpetuate feelings of guilt and shame. If a sexual 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.
- If the person disclosed the assault, reassuring them 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 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 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. If the allegation is against the most senior staff member then the next most senior staff member must make the report. The report must be made as soon as practicable, once immediate safety and medical needs are met. Where staff at a service can contact ‘on call’ staff quickly, they may do so to discuss the incident.

The worker 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 worker 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 worker 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 unit, which may be a Sexual Offence and Child Abuse Unit (SOCAU) for the area or a General Duties Police Unit. Refer to Appendix One for Sexual Offence and Child Abuse Unit contacts.

At the time of contact it is important that Police are advised if the client has impaired mental functioning1 and will need the support of an Independent Third Person during interview or when a statement is being taken.

1 This term is used in the instruction for consistency with the current legislation.
3.7 Contact the local Centre Against Sexual Assault (CASA)

If the client consents, in instances of alleged sexual assault, the local CASA should be contacted at the same time the Police are informed of the allegation. As in section 3.4, the most senior staff member in the relevant work area has this responsibility. CASA should always be involved unless the victim does not want contact with this service. Where the allegation is of sexual assault and the client is examined by a Forensic Physician, staff must ensure that the alleged victim is offered the assistance and support of a counsellor-advocate from CASA. 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 to contact CASA (see section 4.3).

CASAs operate throughout Victoria and provide both crisis and ongoing counselling support to recent and past victims of sexual assault. All victims of sexual assault, whether female or male, have the right of access to CASA services. Available services include:

- Immediate crisis counselling and support
- Follow-up, longer-term counselling and support
- Information regarding the victim’s options and rights within the legal system
- Information regarding medical options, including follow-up medical treatment
- Assistance in the management of sexually transmitted diseases 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 friends and family members.

Appendix Two lists Centres Against Sexual Assault throughout the State.

3.8 Forensic medical examination

In some instances, the Police may suggest that the Victorian Institute of Forensic Medicine (VIFM) be called to provide a Forensic Medical Officer, free of charge, to examine victims. VIFM 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 (tel. 9684 4480). In this instance, the Forensic Medical Officer will:

- Assess and treat any immediate medical needs;
- Undertake tests for sexually transmitted diseases and pregnancy, if appropriate; and
- 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 do not report assaults immediately, so time will often have been lost that may have an adverse impact on the victim’s health or the gathering of evidence. For adults, such an examination will often take place at the local CASA or hospital crisis care unit. For children under 17 years, paediatric forensic medical services may be provided through the Gatehouse Centre (Royal Children’s Hospital), South East CASA (SECASA at Monash Medical Centre) or the nearest Hospital Crisis Care Unit.

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.

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 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 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.
Responding to allegations of physical or sexual assault

Immediate response to an allegation of assault

- Call for immediate medical assistance if needed
- Listen carefully to and reassure the victim
- Preserve forensic evidence

Advising victim that Police will be called

Call Police. If an immediate response is required, call 000

In alleged sexual assault, with the victim's permission, contact the local Centre Against Sexual Assault

The Police may suggest a forensic medical examination and will arrange this

If the victim has a mental impairment, advise Police of this and the need for an Independent Third Person
4. Where a client is the alleged victim

4.1 Inform the client of the process

In order to assist the client to make an informed decision about whether or not 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 will 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 mental impairment must have an Independent Third Person (ITP) present during the interview. The role of the ITP is to facilitate communication, ensure that the client understands his or her rights, and to support the client. Police are responsible for arranging the ITP.
  - Departmental and funded agency staff should not act as the ITP.
  - Where the alleged victim is under eighteen 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 mental impairment, then an ITP rather than an Independent Person should be present.
- 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 Advocacy

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

Under no circumstances, however, should an advocate or ITP or staff member interview the client about the allegation—that is the role of Police. It is acknowledged that some discussion may be required to establish safety and a basic understanding of what has occurred. If the victim needs to talk about what happened, listen and show your concern about the events.

CASA has an agreement with the Office of the Public Advocate that counsellor/advocates can act as ITP’s for sexual assault medicals and crisis care unit presentations.
4.3 Notification of next of kin or guardian

*Note that in any 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 an allegation is reported.

4.3.1 The client is receiving disability services or juvenile justice services and is under 18 years

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 or juvenile 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 an intellectual 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 juvenile 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 An Office for Children or Juvenile Justice client 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 region or the Juvenile Justice Custodial Centre Chief Executive Officer. 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.

4.4 Clients from Indigenous or culturally and linguistically diverse communities
For clients who are from culturally and linguistically diverse communities (CALD), or from indigenous communities, staff should consider referring the victim to specialist agencies or staff for additional support. For example, Juvenile Justice Custodial Centres have Aboriginal Support Workers and Cultural Support Workers. It may also be necessary to arrange a translator.

4.5.1 Clients from Indigenous communities
Staff should facilitate an integrated, holistic approach with other staff or service providers, which may include accessing both mainstream and local Indigenous support services. The victim may not want to access the Indigenous services located in the local area where they reside, and 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 (see Appendix Four for contact details).
4.5.2 Clients from culturally and linguistically diverse communities

4.5.2.1 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 possible to interpret for the client, Police and other persons involved in the process. Contact the Translating and Interpreting service on 131 450 (local call charge, 24 hours/7 days a week service).

Some victims from CALD communities 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.

A 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 the Victorian Deaf Society (ph. 9473 1117).

When using an interpreter directly, consideration should be given to arranging an interpreter who is not associated with the victim or his or her immediate cultural community.

4.5.2.2 Culturally-specific CASA services
CASA is the lead agency in providing support services to all victims of sexual assault. There are culturally-specific services available to victims from CALD communities.

4.5 Care plan
Agreed action for the client needs to be recorded on his or her care plan. This must include:

- what steps are being taken to assure his or her safety in the future;
- what treatment or counselling he or she can access;
- modifications in the way services are provided (for example, same gender care or placement);
- how best to support the client through any action he or she takes to seek justice or redress;
- any ongoing risk management strategy required where this is deemed appropriate.
5. The client uses an alternative form of communication

Where the client uses an alternative form of communication, such as symbols, signs or facilitated communication, an Independent Third Person (ITP) can usually assist the client to communicate with the Police.
6. Where a client is the alleged perpetrator

6.1 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 mental impairment 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 (IP) must be present during the Police interview.

6.2 Legal representation
Staff must contact the worker 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, departmental Intake and Response should be contacted in relation to legal representation.

6.3 Notification of next of kin or guardian
Next of kin or guardian should be notified of the alleged assault following the instructions set out in section 4.3.

6.4 Support client
The client’s worker should ensure the client is referred for counselling and appropriate intervention. Under no circumstances should an advocate or ITP or staff member interview the client about the allegation—that is the role of Police.

6.5 Care plan
Agreed action for the client needs to be recorded on his or her care plan. This must include:

- what treatment or counselling he or she can access;
- 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 on-going risk management strategy required where this is deemed appropriate.
7. Reporting within or to the department

7.1 Complete an incident report

Under the departmental Incident Reporting System all category one incidents must be reported to the Regional Director, via the relevant line manager, immediately and no later than the next working day. Category two incidents must be reported as soon as possible, and within two working days.

To assist staff in accurate categorisation of reports, further advice is provided below regarding allegations of physical and sexual assault.

7.1.1 Category one assaults

The assault of a client by a staff member or volunteer carer is category one regardless of the need for medical attention and regardless of the type of sexual assault alleged (for example, rape or indecent assault). Rape and production of child pornography are always a category one incident. Physical assault of or by a client that either results in medical attention being required for the victim, or involves use of a weapon, is a category one incident. Medical attention means treatment by a medical practitioner.

7.1.2 Category two assaults

Physical assaults not requiring medical attention are usually category two incidents (unless the alleged perpetrator is a staff member or volunteer carer). A physical assault between clients that requires first aid only, for example, is a category two incident. Sexualised play of a concerning nature by a client is a category two incident, and unless there is a question of assault having occurred, would not usually be reported to Police. Behaviours of concern in relation to sexualised play need to be considered with regard to the age of the child or young person, and judgements about what is socially and developmentally appropriate.

7.1.3 Indecent assault of or by a client

Indecent assault of or by a client will usually be categorised as a category one or two incident depending on the circumstances of the event. An event such as forcible touching of a client on the breasts or genitals is likely to be category one. The level of distress caused to the victim is a factor in categorising the incident.

Inappropriate touching by a client with an intellectual disability needs to be considered in the context of the individual client’s behaviour. If the client lacks understanding of the behaviour (for example they are unable to distinguish between the significance of touching someone on the arm as opposed to the breast) then it may be most appropriate to categorise the incident as category three. Under these circumstances an incident report must be completed and an appropriate behaviour management plan must be put in place and monitored; but it is not necessary or appropriate to report the incident to police. If the client already has a current behaviour management plan, then this would need to be reviewed with the client, and significant others where appropriate.
However, a client with an intellectual disability may have the cognitive capacity to understand inappropriate touching is unacceptable, and hence an incident will be category one or two depending on the circumstances. Staff should be mindful that sex offending behaviour (for offenders both with and without a disability) develops via a progression of behaviours which increase in severity over time. Accurate categorising and reporting of inappropriate sexual behaviour will assist in identifying the need to intervene and assist the client to develop appropriate behaviour.

7.1.4 Exposure in a public place
Exposure in a public place by a client with a disability needs to be considered in the context of the individual client’s behaviour. If the behaviour is such that criminal charges are likely, or the client has previously been charged with sexual offences, then the incident must be categorised as category one. If the client lacks understanding of that behaviour or has a behavioural issue then it may be most appropriate to categorise the incident as category three. Under these circumstances an appropriate behavioural management plan must be put in place and monitored, but it is not necessary or appropriate to report the incident to police. If the client already has a current behaviour management plan, then this would need to be reviewed with the client, and significant others where appropriate.

7.1.5 Prostitution
Prostitution by a client is a category one or two incident depending on the circumstances of the event. A care plan must be put in place to reduce the risk of harm to the client (see for example, section 6.5).

7.1.6 Classifying incidents
Classifying of incident reports must follow the table below as a minimum requirement. It is not possible to stipulate every possible variety of incident, and judgement by senior staff will be required.

<table>
<thead>
<tr>
<th>Category</th>
<th>Type of alleged assault</th>
</tr>
</thead>
</table>
| Category one | Rape of or by a client  
Rape or indecent assault by a staff member or volunteer carer.  
Production of child pornography by a client, staff member, or volunteer.  
Physical assault of a client by a staff member or volunteer carer.  
Physical assault of or by a client resulting in medical attention being required for the victim (e.g. stitches, surgery, setting of a fracture).  
Physical assault of or by a client involving a weapon such as a knife, hammer, or other object.                                                                 |
| Category two | Sexualised play of a concerning nature by a client                                                                                     |
| Category three | Shoving or pushing by a client that does not cause injury                                    |
7.2 Record on the client file

Information regarding the allegation must be recorded on the client file. Relevant information includes:

- a copy of the incident report;
- whether or not the client wished to participate in the Police investigation;
- the client's physical and emotional condition;
- details of the action taken in relation to the client's condition: ambulance or doctor called, time, date;
- whether or not the client wished to notify the next of kin. (If the client has a legal Guardian, the Office of the Public Advocate should be notified)
- the time and date of notification to the next of kin or guardian, and the name of the person who made the notification; and
- follow up report regarding the outcome of investigation of the allegation.

7.3 Criminal injuries compensation and victim support

Application for Criminal Injuries Compensation 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.

The victim may also wish to contact the Victim's Support Agency (ph. 1300 659 419), the Victims of Crime Assistance Tribunal (9628 7855, toll free 1800 882 752), and the Victorian Court Information and Welfare Network.

7.4 Debriefing for staff

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

Support is available for departmental staff through the department's Critical Incident Stress Management Service (CISM), by contacting the regional CISMS Co-ordinator. The service aims to facilitate the recovery of normal 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 agencies are responsible for the welfare and support of their staff, including the appropriate provision of debriefing services. The CISM 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 CASA may be able to provide assistance with debriefing (see appendix two).
General arrangements to support staff and clients 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.
8. Where the alleged victim and the alleged perpetrator reside, attend or work in the same setting

8.1 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.

8.2 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. 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 (see section 6.5).

8.2.1 Relocation of a client with a disability

For clients with a disability, a decision to remove a person from a setting must be made on an individual basis in consultation with the most senior staff member in the facility. When a decision is taken that a situation warrants a person being moved from the setting, then 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:

• Is, in the opinion of the most senior staff person present, 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, then the most senior staff person on duty should contact the next of kin 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; and
• Where the person has a designated advocate, an attempt has been made to obtain their advice.
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.
9. 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 impairment.

- Section 51 prohibits a carer from taking part in sexual acts with mentally impaired people in their care. Consent is not a defence.
- Section 52 prohibits sexual acts between residents with mental impairment and carers in residential facilities. Consent is not a defence.
- 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.

9.1 Follow departmental or agency disciplinary procedures

After reporting to the Police, the line manager must be immediately notified of the report. The manager must then notify the Regional Director, who will prepare a briefing for the relevant Executive Director.

In relation to a departmental staff member, while the Police investigate the matter, the Regional Director will instigate any necessary discipline procedures in accordance with the relevant award agreement. It is important that any steps taken do not undermine action that Police may instigate. Refer to the Victorian Public Sector Code of Conduct and the department's Policy and Guide for Managers on Investigations (currently under review) for further information on action to be taken in this situation.

Where an allegation is made against a staff member or volunteer carer of an agency providing services funded by the department, reference should be made to program guidelines and the agency’s disciplinary procedures.

The rights and care of the client are the paramount concern.
10. Where a staff member is the alleged victim of a physical or sexual assault by a client

10.1 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, CASA), 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.

10.2 Follow incident, DINMA 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 DINMA (Disease Injury Near Miss Accident) 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 region. Should a decision be made not to report to Police, this must be clearly documented.

10.3 Victim may choose whether to participate in the police investigation
The alleged victim may choose whether or not to participate in the police investigation.
## Appendix three

### Other services

<table>
<thead>
<tr>
<th>Service</th>
<th>Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Aboriginal and Torres Strait Islander Corporation Family Violence Prevention and Legal Services (Victoria)</strong></td>
<td>9654 3111 1800 105303 (free call)</td>
</tr>
<tr>
<td>Provides legal services, information and referral and counselling to Indigenous victims of family violence and sexual assault.</td>
<td></td>
</tr>
<tr>
<td><strong>Office of the Public Advocate (OPA)</strong></td>
<td>9603 9500 1800 136 829 (free call)</td>
</tr>
<tr>
<td>OPA is an independent statutory agency which represents the interests of Victorian people with a disability. OPA coordinates the Independent Third Person program.</td>
<td></td>
</tr>
<tr>
<td><strong>Translating and Interpreter Service</strong></td>
<td>131450</td>
</tr>
<tr>
<td><strong>Victims Support Agency</strong></td>
<td>1300 659 419 business hours</td>
</tr>
<tr>
<td>Principal referral agency for all victims of crime. Provides a central telephone and referral service. Refers victims of crime to appropriate support services, and provides advice about legal options and compensation.</td>
<td></td>
</tr>
<tr>
<td><strong>Victorian Aboriginal Health Service</strong></td>
<td>9419 3000</td>
</tr>
<tr>
<td>Services include doctors and counsellors.</td>
<td></td>
</tr>
<tr>
<td><strong>Victorian Court Information and Welfare Unit</strong></td>
<td>9603 1800 business hours</td>
</tr>
<tr>
<td>Offers assistance in the form of support and non-legal information to all people in contact with the courts. Free service available to individuals, families and friends.</td>
<td>1800 681 614 (free call)</td>
</tr>
<tr>
<td><strong>Victorian Deaf Society</strong></td>
<td>9473 1117 As above and 9473 1118</td>
</tr>
<tr>
<td>Manages the Vicdeaf Auslan and interpreting services</td>
<td></td>
</tr>
<tr>
<td><strong>Victorian Institute of Forensic Medicine</strong></td>
<td>9684 4480 (24 hours)</td>
</tr>
<tr>
<td>Provide clinical services and medical advice in the investigation of violent crimes and other offences.</td>
<td></td>
</tr>
<tr>
<td><strong>Women’s Domestic Violence Crisis Service</strong></td>
<td>9373 0123 (24 hours)</td>
</tr>
<tr>
<td>Provides support, information and referrals to refuge and other safe accommodation.</td>
<td>1800 015 188 (toll free for country callers)</td>
</tr>
</tbody>
</table>