



Conducting Investigations



**Responding to disclosed, reported or observed abuse
of people with disability by members of staff**

**A guide for Victorian disability
service providers**

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Part 1: Background

1. About this guide

This guide has been developed to assist Victorian disability service providers when conducting investigations into alleged abuse, neglect, and violence toward people with disability. Although people with disability can experience abuse from different sources, the primary focus of this guide is incidents of abuse, neglect, exploitation and violence by service provider staff.

Employers have a responsibility to investigate for themselves and take account of the workplace context, even if there has been an external investigation by police. This is important as a matter of natural justice, as well as to comply with the requirements of the *Fair Work Act* (2009).

The National Disability Insurance Scheme (NDIS) will be supported by a new national quality and safeguards framework. During transition to this new framework, Australian states and territories will continue to play the lead role regarding the safety of people with disability through the existing service quality measures, systems and statutory bodies in place.

This guide is intended for use during the transition period in Victoria. However the core principles and approaches will continue to be applicable under the NDIS and beyond.

2. Zero Tolerance Initiative

This guide is part of NDS's *Zero Tolerance* initiative, which supports disability service providers to develop and improve on their approaches to safeguarding the rights of people with disability they support. Information in this guide is best considered within context of the full *Zero Tolerance* framework which outlines a human rights-based approach to preventing and responding to abuse.

Having a clear commitment to investigating abuse and neglect within your organisation sends a strong message that allegations and disclosures will be taken seriously. This is empowering for people with disability and staff who will feel more confident to speak up knowing that prompt action will be taken.

For more information and *Zero Tolerance* resources, visit:

<https://www.nds.org.au/resources/zero-tolerance>

3. The Victorian Disability Worker Exclusion Scheme

Victorian service providers supporting people with disability in residential services are subject to the Disability Worker Exclusion Scheme (DWES). The scheme is administered by the Victorian Department of Health and Human Services (DHHS). This guide has been developed in cooperation with the DHHS DWES Unit.

DWES collects and uses information about people who are found to be unsuitable to work with people with disability. People who are found to be unsuitable are placed on the *Disability Worker Exclusion List* and are prevented from obtaining employment in disability residential services with any DHHS-funded or registered service provider (including NDIS funded supported living arrangements registered with DHHS).

Although the mandatory requirements of DWES currently only apply to workers in residential services, advice in this guide will be useful for any organisations conducting investigations into the conduct of their staff.



The DHHS DWES Unit relies on the quality of information provided to them by the service providers to make a decision to place someone on the *Disability Worker Exclusion List*. Critical DHHS related information is highlighted in **text boxes** like this throughout this guide.

4. Disability Services Commissioner investigations

The Disability Services Commissioner (DSC) in Victoria is an independent statutory body established to receive complaints about disability services. All service providers in Victoria have a legislative obligation to advise service users of their right to make a complaint to the DSC.

Following receipt of a complaint, the DSC may decide to lead their own independent investigation. The service provider which is the subject of the complaint and others may be compelled to attend, give evidence and produce documents under section 122 of the *Disability Act 2006*.

Where the DSC has decided to investigate, the service provider should consult with the DSC prior to conducting any internal investigation to ensure that the DSC's independent investigation is not compromised.

The DSC's investigation will lead to a decision by the Commissioner as to whether the complaint is 'justified' or not. The purpose of DSC advice in cases where complaint issues have been 'justified' is to ensure that the best outcomes are achieved for individuals receiving the service and that service providers are accountable in completing actions to remedy the complaint. There are penalties for service providers who fail to comply with DSC actions to remedy.

5. Assumptions

This guide is just one component in the response to any incident(s) of abuse that have been disclosed, observed or reported. It assumes that organisations have:

- met their primary responsibilities to ensure the safety of all parties, including providing any required medical or emergency services
- reported the matter appropriately, including to the police where a criminal offence is detected
- where there are criminal allegations, consulted with police and relevant oversight bodies before commencing an investigation to ensure that evidence is not compromised
- met their reporting obligations under Victorian policy and legislation (see Appendix 3)

In the case of alleged abuse by a staff member, organisations should also take prompt action to remove staff being investigated from the workplace. Options for consideration pending the outcome of the investigation include:

- standing the employee down with pay
- providing options to take leave (with or - by agreement - without pay)
- temporary agreed redeployment to a role that doesn't involve contact with service users

Organisations have a duty of care to their service users **and** their staff. Prioritise the safety and wellbeing of all people involved to inform the best option.

This guide focuses on the investigation process. For guidance on the most appropriate immediate response to an incident, Victorian providers should refer to the DHHS Client Incident Management System and procedures. The Victorian Office of the Public Advocate's [Interagency Guideline for Addressing Violence, Neglect and Abuse \(IGUANA\)](#) is another useful guide for providers.

6. Caution

Undertaking an investigation is a complex process which can have significant consequences if mishandled. Service providers should never attempt to undertake investigations without ensuring the availability of appropriately trained and experienced staff or funding to access external expertise. Staff training on these elements with skilled and experienced professionals is strongly recommended. When in doubt, service providers should consult directly with the police, DHHS and other experts as noted in this guide.

This guide is not legal advice and does not replace existing Victorian policy, legislation or procedure. It promotes best practice approaches associated with conducting an investigation and outlines steps for service providers in responding to allegations of abuse.

7. Terms used in this Guide

Abuse	all forms of abuse, neglect, violence or exploitation experienced by a person with disability, e.g.: physical, sexual, financial, emotional
Accused	person being investigated following disclosed, reported or observed abuse
Allegation	any disclosed, reported or observed act of abuse or claim that an act of abuse has taken place
CIMS	The Department of Health and Human Services Client Incident Management System, launched in 2016
NDS	National Disability Services , the national peak body for non-government disability service providers
Incident	The occasion where an act(s) of abuse, neglect, violence or exploitation of people with disability has been alleged and is being investigated
Investigation	A process involving identification, gathering and analysis of evidence and information about an incident in order to establish the facts and inform the next steps.
Procedural Fairness (also known as natural justice)	Principles that guide the fair treatment of the staff member(s) under investigation
Service Provider	Any organisation funded to provide supports to people with disability
Victim	Person who has disclosed an act of abuse or is the focus of any observed or reported abuse



How does the Disability Worker Exclusion Scheme affect your approach to investigations?

Service providers should notify the DWES Unit once it is established that

- there is an allegation that an incident that meets the DWES criteria has occurred
- the provider decides there are grounds to conduct a workplace investigation; and
- the worker is stood down, or otherwise removed from direct support roles

Part 2: Conducting Investigations

Supporting the person throughout the investigation process

Throughout any investigation process, organisations should provide continued support to the person(s) at the centre of the incident, including:

- reassurance that they have done the right thing to disclose and/or report abuse
- trauma and counselling supports where required
- changes to regular support as appropriate
- clear, ongoing communication about the investigation process,
- information on available supports including advocacy

1. Elements of an Investigation

An **investigation is a fact finding process**. It involves identification, gathering and analysis of evidence and information in order to establish the facts and inform the next steps. This guide describes four elements of an investigation that may be required following an observed, reported or disclosed incident of abuse: **criminal, disciplinary, person-focused** and **organisational**.

- a) Criminal:** a criminal investigation seeks to establish whether a criminal act has taken place; the person(s) responsible; and whether there is sufficient evidence to prove guilt beyond a reasonable doubt in a court of law. Service providers must always notify the police when they have reason to believe a crime has been committed. Criminal investigations should only be conducted by the police who will guide you in relation to your requirements. However, the same evidence may be used across multiple elements of an investigation.
- b) Disciplinary:** refers to a service provider's human resources response to an incident. A disciplinary investigation seeks to establish the response needed by an organisation in relation to alleged staff misconduct. An organisation's code of conduct, policies and procedures play an important role in disciplinary investigation.

Disciplinary investigations do not require the same level of proof as criminal investigations. Action may be taken if it can be reasonably concluded that, on the balance of probabilities, there was a high likelihood of some level of misconduct. This may include formal warnings, suspension or dismissal of staff.

- c) **Person-focused:** all investigations should allow for the safe participation and full contribution of the person(s) with disability involved in the incident being investigated. However a specific ‘person-focused’ element is also required. Led by the service provider with the full participation of the person (and others involved), it seeks to understand their experience of the incident, and any related issues prior or subsequent related to a person’s support that may have contributed. It should lead to clear actions and next steps being developed with the person concerned.
- d) **Organisational:** This should answer the question ‘*what was it in our organisation that enabled this to occur?*’ including policies and practices which may have contributed to the incident’s occurrence in the first place, the nature of the response and making changes where needed.

Depending on the incident, all four elements may be required. Each is important; however this guide focuses predominantly on the disciplinary element.

2. The Importance of Confidentiality

Confidentiality and privacy are critical. Every effort should be made to maintain both for those concerned at all times throughout any investigation. Examples include:

- limiting the investigation to those who need to be involved in order to maintain confidentiality and procedural fairness;
- advising all participants in the investigation of the requirement that they maintain confidentiality;
- having policies and procedures in place to encourage and protect anyone making disclosures from recrimination; and
- having clearly outlined policies and procedures to encourage and protect staff reporting abuse and neglect (e.g. a clear whistle-blower statement and policy).

3. Criminal investigations: working with the police

In the case of criminal (or suspected criminal) incidents, the police should be notified immediately. Service providers should then be guided by police advice regarding next steps. Police may:

- ask you to delay any internal investigation processes pending outcomes of their criminal investigation processes
- provide advice about how to avoid interference with any possible police investigation
- ask you not to mention police involvement to staff or talk about the incident with other service users, families or staff pending outcomes
- determine an offence has not been committed and take no further action
- advise that you may undertake parallel internal investigations and offer advice and support

All police advice should be followed, documented and (where appropriate) communicated to relevant parties. Advice to delay investigations or wider communications should be revisited through ongoing discussion with police.



DHHS provides clear guidance around when police must be involved in [Responding to Allegations of Physical or Sexual Assault, \(2014\)](#)

The Department's new [Client Incident Management System \(CIMS\)](#) will be introduced in 2016, focussing on the safety and wellbeing of DHHS clients. CIMS will apply to all services funded or operated by the Department (except those that report through the Victorian Health Incident Management System VHIMS).



What does the DWES Unit need to know about the investigation?

In the event of a criminal investigation, organisations must provide the DWES Unit with:

- the name and contact details of the allocated police officer
- whether the worker has been charged
- specific details of charges (if known) including when charges were laid
- any proposed court and date (if known)

When the police do not proceed to formal investigation or no conviction occurs

If the police do not detect that an offence has occurred and do not proceed with a formal investigation, seek their advice (in writing if possible) to inform your decision about how to proceed with your investigation.

Even if police do conduct a formal investigation, there can be many reasons why a formal prosecution or criminal conviction may not occur, including:

- lack of evidence of an offence being committed
- withdrawal of a complaint, or request of no further action
- legal barrier to charges being laid
- accused being found not guilty

Unless police have provided written advice that the worker has been exonerated, a disciplinary investigation should still be conducted. Non-criminal misconduct is still cause for investigation and follow-up within an organisation.

The police may provide access to evidence collected in the criminal investigation which can assist. Equally, any new evidence that emerges during the service provider’s investigation should be immediately shared with police.



DWES requirements related to police outcome

Provide written documentation of the police outcome to the DWES Unit. Include the name of a police contact person where possible.



DWES requirements following resignation or dismissal of staff member

If a worker resigns and the provider decides to not investigate further then there may be insufficient material to support placement on the *Disability Worker Exclusion List*.

Likewise, if an employer decides to summarily dismiss a worker without a formal investigation, the DWES Unit may not be able to support their placement on the *Disability Worker Exclusion List*. Furthermore the absence of an investigation increases the risk of claims relating to unfair dismissal, general protections and discrimination.

It is important to note that the organisation still has an obligation to investigate any incident that falls within scope of the DWES, even when the worker resigns or is stood down.

4. Preparing for a disciplinary investigation

Taking into consideration advice from the police and other relevant bodies, you will need to plan your investigative approach. In the case of abuse of a service user by a staff member, your primary aims are to establish:

- the impact on the person with disability; and
- whether the allegation against the staff member can be substantiated

Both elements should be treated with equal importance.

Where multiple people with disability are involved, multiple investigations should be undertaken to consider the specific circumstances and experiences of each person.

a) Nominate a single point of contact

- Identify a suitably skilled and experienced senior member of the organisation to coordinate the investigation process on behalf of your service. This does not necessarily mean they will conduct an investigation (see below) but that a **single coordination point** (or **contact person**) is established.
- This person should not have direct connections to staff being investigated. Any potential conflicts of interest should be declared prior to accepting the role.
- They should analyse all existing evidence, materials and reports from the assessment process so they can make informed decisions about the best approach.

b) Nominating an investigator

- There is no single response to the question of whether or not to engage an external investigator. If no legislated requirements exist, the circumstances of the case will dictate the most appropriate action. If the matter is being investigated by the DSC, consultation with the DSC is advised.
- In appointing any investigator, consider their:
 - Expertise in working with people with disability – especially in interview situations
 - Investigative skill levels proportionate to the seriousness of the allegations
 - Capacity to manage the complexity of the case
 - Capacity to maintain independence from the events and potential consequences
 - Demonstrated communication skills and a range of interview techniques
- Independence is a significant factor in a successful process. This extends to any outside perceptions of independence. The investigator should also be independent of decision-making about disciplinary action, such as suspension or dismissal. Any conflict of interest is to be declared and managed if appropriate.
- Where there is potential that investigations might be compromised or lack transparency or rigour, the engagement of an external investigator is strongly advised.

c) Where two agencies are involved

- Where your organisation does not have the lead workplace relationship with the staff member(s) being investigated (e.g. a worker provided by a third party employment agency) it will be necessary for the providers and DHHS to work together to ensure an investigation is completed.
- Cooperation will be required to identify agreed responsibilities for each provider, with respect for the confidentiality of those involved. Typically, the provider responsible for reporting the incident to DHHS will also be responsible for related obligations including investigation, review and data analysis.
- For clarification or support, contact your DHHS Local Engagement Officer (LEO).

5. The investigation plan

An investigation plan should be agreed between your contact person and the investigator, covering:

a) Scope of the investigation

Investigation plans should set out clear terms and scope for the investigation, including:

- clearly defined allegations
- authority of the investigators to access information and interview stakeholders
- setting out clear principles of procedural fairness and right to reply, integrity, confidentiality, and declarations of conflict of interest
- setting the boundaries of the investigation in a way that doesn't limit justice (for example which focuses too narrowly on a specific issue at the expense of broader concerns or is too high level to identify specific issues and facts)

The findings of police and other external bodies' (such as the DSC or child protection) investigations may provide valuable input into your investigation plan. Their findings may also influence the direction of a disciplinary investigation during the process. If this occurs, service providers should defer to this advice and adjust processes accordingly. All changes should be clearly documented and communicated to relevant parties.

A brief overview of the scope and nature of the investigation should be communicated to people affected and their families using their preferred communication styles.

b) Who should be involved in the investigation?

Investigations should be limited to those who need to be involved, in order to maintain confidentiality and procedural fairness. Investigation plans should outline any **identified** and **potential** witnesses, including:

- the alleged victim
- the staff member(s) being investigated
- any other witnesses including
 - other service users present during the incident

- other members of staff present during the incident
- other potential perpetrators
- people with additional evidence but who were not necessarily eye-witnesses:
 - other service users or members of staff not present who have additional evidence
 - members of the public and/or other witnesses who can contribute evidence
- other supporters such as:
 - the person's family and other supporters including advocates (if appropriate)
 - staff union representatives and the employee's support person

The investigation plan should outline any supports required to ensure full participation by all stakeholders, including communication supports, how they will be sourced and what assistance is required to use them. Ongoing trauma, medical and counselling supports may also be required for victim(s) and witnesses.

c) Proposed investigative actions and timeframes

The plan should outline a broad methodology for the investigation, including key actions, persons responsible and timeframes for completion. These should be communicated to key parties, notably the person who experienced the incident and supporters, and staff members being investigated.

All investigations should be completed as swiftly as possible, subject to the complexity of the matter and requirements of police and relevant external bodies. Any changes to approach or timeframes should be clearly communicated, including those resulting from the police and others.

d) Identified and potential evidence and where it is located

Ensure that all records, logs and evidence are stored securely. In the case of a criminal investigation, critical evidence will likely be in the possession of the police. This may require negotiation with the police to identify what evidence, if any, can be shared with the investigator and when. The investigator should follow advice from the police on what actions can be taken or communicated in the interim.

e) Identified investigative impediments

The investigator and contact person should conduct a risk analysis to identify any possible barriers that might impact independence, rigour or transparency of the investigative approach, and put measures in place to mitigate them. Examples of barriers include:

- over reliance on evidence from one source
- lack of availability of key witnesses
- access to cultural or language supports
- ensuring timeliness between the incident and the investigation

f) Communication

Service providers have a duty of care to their service users **and** their staff. If an investigation is to go ahead you must take steps to ensure the people involved are adequately informed and supported throughout the investigation process.

In the case of criminal investigations, police and others will set requirements about what, how and when information may be communicated with others. If you are unsure about any aspects of sharing information to stakeholders, seek advice from police.

The investigation plan should articulate who is responsible for communication with all parties. In the first instance this should focus on the person at the centre of the incident and the staff member(s) being investigated. Communication with indirect stakeholders, subject to confidentiality constraints, may include:

- other relevant staff
- the CEO and board of management
- other relevant service providers
- funding bodies
- complaints / statutory bodies
- the media

Organisations should seek to offer an appropriate level of information to other service users and their families regarding the incident, outlining steps to ensure safety within the organisation and providing details for a contact person for any queries.

6. Procedural fairness

Service providers should ensure the investigation process is undertaken according to principles of **procedural fairness**, that is, without bias or undue prejudice. For this reason, many service providers elect to use external investigators in the investigation process.

Procedural fairness is critical for justice for victims and ensuring natural justice for staff suspected of wrong-doing. Insufficient attention to fairness can result in legal challenges that could undermine the outcome of even the most thorough investigation.

If police and other bodies are not conducting independent investigations, organisations may provide advice to the staff member being investigated, including:

- the reasons why they are being investigated
- each individual allegation
- the immediate and future steps that will be undertaken

- how procedural fairness will be adhered to, including:
 - opportunity to give their version of events
 - having access to industrial supports (e.g. union representatives) and advice
 - opportunity to respond to allegations and evidence presented

Investigations should be conducted in a timely fashion (with respect to the specific circumstances) to minimise disruption and support timely resolution and a fair outcome.

7. Obtaining evidence

Investigators must gather sufficient reliable information to allow the issues to be properly understood and addressed. Evidence can include anything relevant that allows for full understanding of an incident, and may be used to corroborate or disprove allegations. This can include:

- Oral evidence from victims and witnesses
- Documentary evidence (records of events etc)
- Personal notes that may indicate behavioural changes during period of alleged incident/s
- Site inspections (to familiarise with locations)
- Photographs
- Sketch or description of the location of the incident, including where people and furniture were situated
- CCTV (where available)
- Phone records
- Examination of any physical evidence
- Medical reports
- Review of any existing audio or visual recordings
- Expert evidence (technical advice)
- Correspondence between the worker and employer
- Policies, procedures or guidelines that govern or dictate duties

Seek police guidance if you are unsure about any aspect of collecting and handling evidence to minimise the potential for interference or impacting on evidence.

Preparing for an interview

Interviews offer investigators a formal opportunity to hear a range of testimonies and eye-witness accounts, confirm facts and explore lines of enquiry. All victims and witnesses should be interviewed.

Investigators should carefully plan each interview they undertake, being clear about:

- purpose for each interview
- potential challenges in conducting the interview
- preferred interviewee communication style and any relevant communication supports
- additional support requirements (e.g. a guardian, advocate or support person who is not involved in the investigation)
- type of information you expect including lawful defences the interviewee may raise
- method of recording interview
- support needs of any persons being interviewed

TEDS is a useful guide when asking questions during an interview:

T - "Tell me about that..."

E - "Explain that to me..."

D - "Describe that..."

S - "Show me..."

General tips for successful interviews

- A relaxed environment and approach will suit most situations.
- Interviewers should not be confrontational or take sides.
- There may be occasions – such as where a person appears wilfully obstructive or inconsistent - which require more formal approaches.
- Listen carefully and be flexible: be prepared to hear and follow up on information that you were not anticipating
- Question inconsistencies (if accounts of the same events differ between witnesses)
- Use TEDS (see above) to avoid 'leading' questions which might influence responses (e.g. 'you were very angry with John that day weren't you?')
- Consider making recordings where possible, as they are the most accurate record of the interview. You may supply a copy of the interview to interviewees after the interview or within reasonable time frame
- Give people the opportunity to hear back their statements to confirm / make changes
- Privacy and confidentiality are critical. There should be no discussion of interviews with colleagues or others to reduce the potential for influence or distortion of facts.

Interviewing people with disability

Investigators should make every effort to meet the needs of people with disability to feel comfortable and able to discuss events freely. This includes:

- using a neutral and comfortable setting
- building a rapport
- allowing for the presence of a chosen support person who is not involved in the incident or investigation
- using the person's preferred communication style and ensure availability of any communication aids and trained staff to support them
- being clear why the discussion is taking place
- offering opportunities for a break at any point; repeating periodically if required
- asking clear, short questions with no technical words
- asking open-ended questions (e.g. 'tell me what happened')
- breaking down complicated concepts into easier chunks
- confirming your understanding of answers where possible
- allowing enough time for the person to answer
- managing the input of a support person to ensure they are independent of the process and not communicating on the person's behalf

Conducting interviews with the staff member(s) under investigation

- Choose a neutral and comfortable setting, and take breaks as needed.
- Ensure that all evidence has been gathered
- In most cases it is useful to ensure that all other interviews have been conducted
- Start with a presumption of innocence
- Provide the person with a clear explanation of the allegations against them
- Allow for the presence of a chosen support person (e.g. union representative, peer, family member etc.).
- Ensure any support person is not a potential witness.
- In the case of union representatives it may be wise to have one individual representative for each staff member

8. The Investigation Report

The investigator should provide a detailed report which allows your organisation to make decisions about required outcomes. The report should include:

- The **issue** being investigated in full (including the allegation)
- The **scope** of the investigation
- Investigation **methodology** including process, all inquiries made, who was interviewed and what other evidence has been taken into account
- All identified and **confirmed facts** about events
- **Analysis** of the evidence in support of each separate allegation and particular
- **Recorded statements** quoted as close to verbatim as possible to avoid misrepresentation
- **Conflicting, contradictory or exculpatory evidence** (evidence which exonerates the accused) and analysis of this material
- A **summary** of any analysis and conclusions. If there is limited supporting evidence and/or there is a question of conflicting statements and the investigator relies on one in preference of another, there must be a reason provided.
- **Recommendations** for your organisation, the victim and the alleged perpetrator(s)
- A **statement** that allegations have been substantiated / not substantiated (based on available evidence)
- Copies of **evidence** for review

The finished report should be provided to the **point of contact** who will review the report and evidence to ensure:

- Conclusions are appropriate based on evidence presented
- There is a clear, consistent narrative of events to inform the conclusion
- There is not overreliance on a single witness or piece of evidence
- The report satisfactorily addresses both the experiences of the person with disability and the staff member(s) being investigated
- The investigation is thorough and all avenues of enquiry followed

If the report meets these criteria, it should then be provided to the CEO for action. If the report does not address these criteria discuss with the investigator and consider any additional actions required.

9. Responding to investigation findings

For criminal acts, the response of the police and the courts will guide actions. Where a staff member is found guilty or convicted of the criminal act in a court of law, this may be a valid reason for summary dismissal provided the employer has followed its own natural justice process with the employee. Service providers should ensure that relevant legislation, policies and industrial requirements are met.

Where a court of law does not find sufficient evidence for a guilty verdict or criminal conviction, or where the alleged incident is not a criminal matter, service providers may use the findings of their own investigation to inform their actions.

Unlike in the case of a criminal investigation, disciplinary investigations do not require that the incident be proven 'beyond reasonable doubt', but only that the incident has been proven 'on the balance of probabilities' (i.e. that it is more probable than not that an incident took place). For this reason the following language is suggested:

- **substantiated:** where there is sufficient evidence the incident took place and by whom
- **not substantiated – insufficient evidence:** where there is evidence the incident took place but not enough evidence to make a conclusive finding
- **not substantiated – no evidence:** where there is no evidence of substance that an incident occurred or there is supporting evidence to the contrary
- **disproven:** the evidence shows the incident did not occur as alleged

10. Outcome for the staff member under investigation

Where an investigation concludes there is enough evidence for a disclosure or allegation to be **substantiated**, service providers should act according to legislation and industrial requirements and consider options including dismissal, a formal misconduct warning or suspension.

If the finding is **not substantiated – insufficient evidence**, action may still be recommended. This may include engaging in coaching and other management strategies where it has been concluded there is a skills deficit even though no deliberate misconduct has been substantiated.

A primary consideration for organisations should be the experience of people with disability. Careful and considered thought must be given to whether it is appropriate for the staff member to have any further contact with the person involved based on likelihood of adding to trauma for the person concerned.

For a finding of **not substantiated - no evidence** (or evidence to the contrary) providers should work closely with the staff involved and any industrial representatives to develop a return to work plan. Careful consideration must still be given to whether it is appropriate for the staff member to have any further contact with the person involved based on likelihood of adding to trauma for the person concerned.

Where misconduct is **substantiated**, prior to determining the outcome for the worker the employer should also take into consideration:

- the worker's prior conduct
- the nature of the allegations
- the strength of evidence and evidence relied on by decision maker
- any mitigating circumstances
- any submissions made by the worker

Regardless of the findings, the accused worker should be provided with a written outcome which articulates how the organisation came to its decision regarding employment based on the evidence provided.



DWES requirements after you have completed your investigation

Use the checklist at Appendix 1 to ensure all necessary evidence has been collected to provide to DWES Unit, including:

- the Investigation report
- supporting documents (any relevant investigative material that is not in the investigation report and that would assist the DWES Unit to assess the matter eg copies of interviews)
- the disciplinary outcome or disciplinary hearing if a formal procedure followed
- If a decision is made to return the worker to work, notify DWES and include any information that was used to reach this decision. DWES should be notified prior to returning the worker to work. In this instance all investigative material should be provided to the DWES Unit.
- In accordance with DWES Management Instruction '*a person may not work in a disability residential service once they have been notified that their name may be placed on the List, unless or until they are notified that they don't fall within the criteria, or their name has been removed.*'
- In some circumstances, the DWES unit may request a provider to conduct further investigations or to provide more information. Providers must comply with all such requests.
- DWES may refer a matter to the DHHS Secretary for further investigation, if at the conclusion of an investigation by a service provider; there are reasonable grounds to consider that the engagement of the worker in a direct support role would represent a risk to the health, safety or welfare of a client.

11. Outcomes for victims: person-focused review

Irrespective of other outcomes, a person-centred response is still required to communicate the outcome of the investigation to the person with disability and their family with clear information about any future actions.

A specific person-focused review should take place, which seeks to understand the person's experience and implement any recommendations specific to the victim. The review should seek to understand the incident from the perspective and experience of the person with disability as well as any related issues prior or subsequent related to a person's support that may have contributed to the incident occurring.

Person focused reviews should be led by the service provider with the full participation of the person(s) and any others in their support network. It should lead to clear actions and next steps being developed with the person concerned and their families/carers. The review should prioritise the person's future safety, and the need for any ongoing specialist supports, healing strategies and trauma sensitive care.

Service providers are recommended to follow an AAAA approach, which seeks to provide *Acknowledgement, Actions, Answers and Apology* in the person's preferred communication style and ensure that the person is satisfied with the response. Issues of redress should be discussed with the victim and their representatives as appropriate.¹

12. Outcomes for service providers: organisational review

If an allegation of abuse has been substantiated, the Investigation Report should also form the basis of an internal organisational investigation. This should consider the events covered by the investigation in the broader context of your policies, guidelines, practice and culture. Key questions for the service provider include:

- What was it in our service provider that allowed this incident to occur?
- Were there any earlier signs or signals missed by the service provider?
- Was there anything that could have been done to prevent the incident?
- Did staff adhere to policy and practice guidelines and if not, why?
- Are current policies and practice guides sufficient
- What additional training, practice or resources would assist in future?

Whilst many of these elements may be captured within the investigation report, it is important to consider the wider implications of the incident and any other contributing factors. The purpose of the organisational investigation is to identify any organisational weaknesses, gaps and implement any lessons and improvements to minimise the likelihood of a repeat incident and identify opportunities to strengthen services.

13. Further considerations

¹ Disability Services Commissioner (2012), *Occasional Paper No. 1: Learning from complaints*, 29.

The nature and circumstances of all investigations will differ. Other factors that may require your consideration include:

- Cultural organisational impact of an investigation of abuse of a person with disability by a staff member - even if the allegations are not substantiated. Service users and staff may be angered, upset or confused about what has happened. Use this opportunity to reinforce positive complaints cultures, remind staff of their obligations with regards to reporting abuse and revisit training on human rights and abuse prevention, such as those available through NDS Zero Tolerance initiative.
- Ensure communication of the investigations' findings and recommendations is swift, clear and linked to a commitment to human rights and the *Zero Tolerance* approach to abuse, neglect and violence toward people with disability.
- Examine whether there are any additional supervision, training, specialist support or other resources required for staff involved and beyond.
- Ensure your board of management is informed of outcomes and recommendations and have opportunity to consider their own actions.
- Providers must also comply with any relevant DHHS policies and National Standards for Disability Services regarding organisational reviews.

Appendix 1: Information required from service providers by the DWES Unit

Information provided to DWES forms the basis of any decision by the DWES Unit to place a worker on the *Disability Worker Exclusion List*. Regardless of whether DWES are involved, this checklist is useful to make sure that you have been as thorough as possible in conducting your investigation. Please note that this checklist is not exhaustive. The information provided will be dependent upon the type and scale of the investigation conducted.

- Information about where the incident took place. This may include a sketch of the scene and/or a description of where people and furniture were at time of incident
- Details and background of facility, including:
 - number and gender of clients
 - relevant information about disability type (ambulant/verbal etc)
 - brief staff breakdown if relevant
- Details and background of alleged victim
- Details and background of alleged perpetrator, including:
 - how long they have been employed and position held
 - usual work hours/locations/roles
 - number of shifts in house if new
 - whether they are they the main carer for client
- List of evidence, including:
 - Victim and witness statements
 - Documentary evidence including photographs and medical reports
 - Relevant correspondence between worker and employer
 - Interviews with worker involved in incident
- Any information gathered during a criminal investigation (even if the criminal investigation did not proceed or result in a conviction)
- Documented police outcome in the form of an email or letter, including contact police officer
- Notification if a decision is made to return the worker the work. Include any information used to make this decision

Much of the above information will be covered in any good investigation report. There is no requirement to duplicate information in the report for DWES purposes.

Appendix 2: Victorian Legislation and Policy obligations

Victoria has a range of legislative and policy requirements in place to maximise the safety of its citizens. This includes requirements for disability service providers on actions after incidents of abuse. Requirements vary according to the nature and circumstances of the incident. Service **providers must be aware of, and act according to Victorian legislation and policy** prior to commencement of any investigation. This includes all requirements of the police, child protection authorities, government funding mechanisms and statutory oversight bodies:

- DHHS Incident Reporting:** All organisations with a service agreement with DHHS, and are funded to provide disability services, are required to report critical incidents that involve, or impact, upon people with disability they support. The *Critical person incident management summary guide and categorisation table: 2011* provides an overview of the instruction requirements. <http://www.dhs.vic.gov.au/funded-agency-channel/about-service-agreements/incident-reporting/human-services>²
- Disability Worker Exclusion Scheme (DWES):** this DHHS initiative is designed to protect the safety and wellbeing of Victorians living in disability accommodation. It requires disability service providers to conduct an additional pre-employment check with DHHS prior to making an offer of employment. People found to be unsuitable to work with people with disability are placed on the Disability Worker Exclusion List and are prevented from obtaining future employment in disability residential services: <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/disability-services/disability-worker-exclusion-scheme>
- Reporting to Disability Services Commissioner (DSC):** The DSC provides independent review and monitoring of Category One incident reports relating to personal client assault, injury and poor quality of care reported by disability service providers. DHHS refers all relevant Category One incident reports to DSC for review. The DSC may request further information regarding the incident report including details of internal investigations conducted. If there are areas which warrant follow up and attention, the DSC may also compel attendance, evidence and documents, or provide a Notice of Advice to DHHS or the service provider. The DSC also provides advice to DHHS on the extent to which service provider responses address the wellbeing, safety and rights of people with a disability involved in these incidents. <http://www.odsc.vic.gov.au/>

² As at June 2016, DHHS is developing a new **person incident management system** focused on the safety and wellbeing of DHHS persons. Latest information can be found here: <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/cross-departmental-projects-and-initiatives/person-incident-management-system>

- **Child Protection** Professionals involved with vulnerable children, young people (0-17 years) and their families, including families with an unborn child, may from time to time consider they should report or refer a concern to either Child Protection or the new Child FIRST intake service that is currently being developed within Victoria.

A new offence for failure to disclose child sexual abuse came into effect in October 2014. The offence requires that any adult who holds a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child (aged under 16) disclose that information to police. The offence applies to all adults in Victoria, not just professionals who work with children, unless they have a reasonable excuse. For more information visit: <http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection/about-child-abuse/how-to-make-a-report-to-child-protection>

- **Interagency Guideline for Addressing violence, Neglect and Abuse (IGUANA):** In 2012-2013 the Office of the Public Advocate led work with a range of Victorian service providers including government, the police, NDS and disability service providers to develop the *Interagency Guideline for Addressing Violence, Neglect and Abuse* (IGUANA). This useful resource sets out key actions for service providers responding to incidents of abuse. The guideline can be found here: <http://www.publicadvocate.vic.gov.au/our-services/publications-forms/research-reports/abuse-neglect-and-exploitation/5-interagency-guideline-for-addressing-violence-neglect-and-abuse-iguana>
- **Victoria Police Guidelines: Criminal Abuse of Children and Vulnerable People in Organisations: Reporting to Victoria Police:** These guidelines have been produced for managers in organisations that support children or vulnerable people. They provide advice about when and how to report allegations or incidents of criminal abuse within their organisation to Victorian Police http://www.police.vic.gov.au/content.asp?Document_ID=36239

Appendix 3: Useful Resources

Victoria Department of Health and Human Services

- DHHS [Incident Reporting Instruction](#) (May 2013)
- DHHS [Incident Reporting Guide Flip Chart](#)
- DHHS [Disability Worker Exclusion Scheme](#) (August 2014)
- Funded Agency Channel's [Responding to Allegations of Physical or Sexual Assault](#)
- DHHS [Failure to Disclose Policy](#) (October 2014)

DHHS Disability Worker Exclusion Scheme resources:

- DWES [overview](#)
- DWES [information for service providers](#)
- **Contact:** Disability Worker Exclusion Scheme Unit
Telephone: 03 9096 3203 Email: DWESU@dhs.vic.gov.au

Office of the Public Advocate

- [Interagency Guideline for Addressing Violence, Neglect and Abuse \(IGUANA\)](#)
- [Independent Third Person Program](#)

Disability Services Commissioner

- [Investigations: Guidance for Good Practice - Resource Paper for Disability Services Providers](#)
- Complaints handling for providers: <http://www.odsc.vic.gov.au/service-providers>
- Information sheet No.8: Investigating a complaint

South East Centre Against Sexual Assault

- [Feelings After Sexual Assault](#) Fact Sheet

Others

- VALID 'Staying Safe' [resources](#)
- SCOPE [Communication and Inclusion Resource Unit](#)

Victoria Police

- [Reporting Criminal Abuse of Children and Vulnerable People in Organisations to Police](#)

Others NSW Ombudsman

- [Investigation of Complaints](#) Fact Sheet
- [Planning and Conducting an Investigation](#) (Child Protection)

Queensland Department of Communities, Child Safety and Disability Services

- [Responding to Abuse, Neglect and Exploitation Fact Sheet](#)

Intellectual Disability Rights Service <http://www.idrs.org.au/support/support.php>

Ombudsman Western Australian [Guidelines on Conducting Investigations](#)

Fair Work Act (2009) <https://www.fairwork.gov.au/about-us/legislation>



NDS Zero Tolerance web page: <https://www.nds.org.au/zero-tolerance>