

Department of Communities, Disability Services and Seniors

POLICY

Title: Preventing and Responding to the Abuse, Neglect and Exploitation of People with Disability

Policy Statement:

The Department of Communities, Disability Services and Seniors will take all possible steps to prevent and respond to the abuse, neglect and exploitation of people with disability.

On 1 July 2019, the NDIS Quality and Safeguards Commission (NDIS Commission) commenced in Queensland for Queensland NDIS participants, under the *NDIS Act 2013*.

The role of the NDIS Commission is to: improve the quality and safety of services provided to NDIS participants; register and oversee the operation of NDIS providers; and manage and resolve complaints about NDIS providers.

Under the National Disability Insurance Scheme (NDIS), Queensland's quality and safeguarding laws recognise and align with the NDIS Act and the NDIS Quality and Safeguarding Framework.

Queensland's quality and safeguarding provisions under the *Disability Services Act 2006* (Qld) (DSA) continue for people with disability supported under the DSA who are either:

- ineligible for the NDIS
- subject to positive behavior support and restrictive practices (Part 6 DSA)
- supported by in-kind services under Queensland's NDIS Full Scheme Agreement (Full Scheme Agreement) with the Commonwealth Government.

The NDIS Commission's role encompasses:

- Registrar: national provider registration system, NDIS Practice Standards, NDIS Code of Conduct, national worker screening system
- Complaints Commissioner: NDIS complaints management and resolution system, incident management requirements including reportable incidents
- Senior Practitioner: behaviour support requirements to reduce and eliminate the use of restrictive practices.

The Department of Communities, Disability Services and Seniors (DCDSS) continues to:

- provide worker screening under Queensland's Yellow Card system, with any necessary adjustments to align with the NDIS Commission's national worker screening system
- provide short term approvals for the use of restrictive practices (other than containment and seclusion), and maintain records of short term approvals
- prepare positive behavior support plans in relation to the use of containment and seclusion
- administer the Human Services Quality Framework providing pathways for services to demonstrate compliance

- work with the NDIS Quality and Safety Commission to support its oversight and monitoring of NDIS providers
- ensure that the health, safety and wellbeing of clients in all departmentally delivered and funded disability services is the paramount consideration in service provision and that clients are provided with maximum protection from abuse, neglect and exploitation
- promote a culture of no retribution in the case of reporting suspected or alleged abuse, neglect or exploitation or incidents suggestive of abuse, neglect or exploitation
- ensure there are systems to identify abuse, neglect or exploitation of service users
- ensure timely, adequate and appropriate responses to incidents
- foster best practice through ongoing systems review
- promote an integrated, evidence-based approach to the prevention and identification of and response to abuse, neglect and exploitation, which is supported by ongoing and appropriate workforce development and training.

Differences between the previous DCDSS-only role and the now dual role of the NDIS Commission and DCDSS are outlined in the Fact Sheet: Then and Now for Providers in Queensland: <https://www.ndiscommission.gov.au/sites/default/files/documents/2019-03/factsheet-then-and-now-qld.docx>

Principles:

The DSA recognises that people with disability have the same human rights as other members of society and should be empowered to exercise their rights (s 18 DSA). This is consistent with the *Human Rights Act 2019* and includes the right to:

- respect for their human worth and dignity as individuals
- right to protection from torture and cruel inhuman or degrading treatment
- live lives free from abuse, neglect or exploitation.

This is best achieved through an integrated approach that targets the cultural, environmental and interpersonal causes of abuse, neglect and exploitation.

Principles of Prevention of Abuse, Neglect and Exploitation

- Strategies to prevent the abuse, neglect and exploitation of people with disability include the reduction of isolation, and the enhancement of social connections.
- People at risk have the right to be provided with tailored advice and support. This includes appropriate skill development for people with disability in improving personal safety and capacity for safe participation in their communities.
- Systems and safeguards are established to prevent the occurrence or recurrence of abuse, neglect and exploitation within the service delivery context, including by proactively managing risk to clients and adopting and implementing the child-safe standards framework proposed by the Royal Commission into Institutional Responses to Child Sex Abuse.

Principles of Identification of Abuse, Neglect and Exploitation

- Early intervention approaches are implemented for the identification of the abuse, neglect and exploitation of people with disability, taking particular care of known risk situations, both systemic and individual.
- Regular system reviews are in place so that gaps which may contribute to a person experiencing abuse, neglect or exploitation are identified and remedied.

Principles of Effective Response

- Staff are committed to reporting and openly disclosing any suspected or alleged incidents of abuse, neglect and exploitation. Protections are afforded any person who makes a public interest disclosure, in accordance with the *Public Interest Disclosure Act 2010* (see section 36).
- Any suspected or alleged incidents of abuse, neglect and exploitation of clients are reported in line with the requirements of the department's *Critical Incident Reporting Policy*.
- Specific consideration is given to individual, organisational and systemic issues around client-to-client abuse.
- Clients who experience abuse, neglect or exploitation have the right to:
 - complain about the service they receive or any form of abuse, neglect or exploitation experienced within departmentally delivered or funded disability services without fear of retribution
 - pursue grievances and complaints and fair and equitable access to the criminal justice system without fear of the services being discontinued or recriminations from service providers
 - access appropriate support services to assist with the effects of abuse, neglect and exploitation where appropriate.
- Complaints mechanisms are designed and implemented in a way that makes them accessible to people with disability.
- Any person who reports suspected or alleged incidents of abuse, neglect and exploitation of a client has the right to have their safety and rights respected and safeguarded.
- Families and carers who have identified and reported incidents of abuse, neglect and exploitation have the right to be provided with supports for the response to incidents of abuse, neglect and exploitation, and advice on the outcome of reporting the incident.
- Although directed towards abuse, neglect or exploitation in disability service settings, the obligation to report extends to any circumstances where workers observe or become aware of concerns. For example, a child on respite discloses abuse or neglect by their parents. This must be reported in the Critical Incident Reporting system and to the Department of Child Safety, Youth and Women (CSYW).

Principles of Service Development, Coordination and Delivery

- Service reforms to prevent, identify and respond to the abuse, neglect and exploitation of clients are consistent with the principles of the DSA and the findings and recommendations of inquiries of relevance to preventing and responding to the abuse, neglect or exploitation of people with disability.
- Services are designed and implemented as part of local coordinated service systems and integrated with services and supports generally available to members of the community.
- Individual and environmental risk assessments inform service provision and protect clients.
- Services meet the needs of clients experiencing additional barriers because of their age and gender or because of their rural and remote location.

Principles of Workforce and Workplace Reform

- Human resource management systems and practices support effective recruitment and selection, including compliance with statutory worker screening requirements, such as criminal history checks under the Yellow and/or Blue Card systems, performance monitoring and development, and performance management.
- The cultural needs of clients from Aboriginal and Torres Strait Islander and culturally and linguistically diverse backgrounds in Queensland are safeguarded through training in cultural competency.
- Good practice in behaviour intervention and management is promoted and resourced.
- Management is effective, responsive, stable and skilled.
- The workplace culture supports continuous learning and professional development to respond to the needs of individuals being supported.

Objectives:

This policy aims to ensure the disability rights conferred by the DSA are upheld through:

- promoting safer communities and better quality services to clients through the implementation of effective measures to prevent, identify and respond to abuse, neglect and exploitation
- ensuring that clients are provided with adequate and appropriate supports for the response to incidents of abuse, neglect and exploitation.

Scope:

Abuse, neglect and exploitation can take many forms. This is reflected in the various definitions of abuse, neglect and exploitation, which are outlined in Appendix One. This policy:

- applies to all departmentally delivered and funded disability services and, consequently, to all staff and volunteers within these services, including the Department's Accommodation Support and Respite Services (AS&RS) and the Forensic Disability Service
- forms part of a framework of measures aimed at protecting the health, wellbeing and safety of people with disability
- complements other safeguards provided to people with disability through the DSA and the *Guardianship and Administration Act 2000*
- provides an overarching framework for funded non-government disability service providers.

Note: As part of their service agreement, funded non-government service providers must have, maintain and implement their own Abuse, Neglect and Exploitation Policy and act in accordance with the department's Abuse, Neglect and Exploitation Policy (i.e. this policy) and the department's Critical Incident Reporting Policy.

The scope of the policy does not include:

- measures contained in other policies, for example, critical incident reporting. Nevertheless, meeting the requirements of the *Critical Incident Reporting Policy* is a necessary, but not complete, response to the abuse, neglect or exploitation of people with disability
- guidance or support in the use of restrictive practices. For further information on restrictive practices, consult the department's restrictive practices resources.

Roles and Responsibilities:

1. The Department

It is the role of the department to:

- comply with all legislative obligations
- promote a culture within services and a proactive systems approach to prevent and identify abuse, neglect and exploitation of clients
- support and influence training of staff in all departmentally delivered and funded disability services
- develop and implement effective communication strategies to promote this policy within all departmentally delivered and funded disability services
- report to the relevant authority or agency when required
- support and monitor the implementation of the policy within all departmentally delivered and funded disability services.

2. Managers of Departmentally Delivered and Funded Disability Services

Managers of disability services have specific responsibilities to ensure the prevention, identification and response to the abuse, neglect and exploitation of clients.

Prevention of abuse, neglect and exploitation of people with disability

It is the role of managers of the services to:

- ensure that all staff and volunteers are aware of, trained in, compliant with and implement the policy and procedures on preventing and responding to the abuse, neglect and exploitation of clients
- provide active support to staff to create an appropriate service culture in accordance with the policy
- ensure staff are aware of and compliant with statutory safeguards, including the need for restrictive practice approvals and reporting of usage, and criminal history screening under the Yellow and/or Blue Card systems
- ensure staff are trained to recognise and prevent/minimise the occurrence or recurrence of abuse, neglect and exploitation of clients within a service delivery context
- develop a coordinated and uniform approach to promoting the rights of clients within their families, communities and cultures.

Identification of abuse, neglect and exploitation of people with disability

It is the role of managers of the services to ensure:

- systems are in place to identify and remedy gaps which contribute to a client experiencing abuse, neglect or exploitation
- staff are trained in early intervention approaches where potential or actual abuse, neglect or exploitation of clients is identified.

Responding to abuse, neglect and exploitation of people with disability

It is the role of managers of the services to ensure:

- There is a culture of no retribution for any person who reports abuse, neglect or exploitation of a person with disability.
- Guardians or substitute decision-makers are informed of alleged or suspected instances of abuse, neglect and exploitation, unless the guardian or decision-maker is the alleged or suspected perpetrator of the abuse, neglect or exploitation, in which case a decision should be made on a case-by-case basis and in consultation with the Queensland Police Service (QPS).
- Relevant staff advise clients, their families and advocates about:
 - support services, which are equipped to identify abuse, neglect and exploitation and able to refer individuals to appropriate specialist services
 - their right to pursue grievances and complaints and access the criminal justice system.
- Any concerned person, including but not limited to, the person with disability, another consumer, relative, friend or person from the community is able to make a report or an allegation of abuse, neglect and exploitation, without fear of retaliation or retribution.
- All staff supporting clients are respectful of their rights and needs.
- Abuse, neglect or exploitation of clients is reported to the relevant authority in line with the requirements of the department's *Critical Incident Reporting Policy*.
- Child abuse or neglect in any setting is immediately reported by services to CSYW and QPS.

3. Staff of Departmentally Delivered and Funded Disability Services

It is the role of all relevant staff to:

- provide services to clients in a manner that is consistent with the policy
- support management to create a culture of no retribution for reporting of suspected abuse, neglect or exploitation
- provide active support to other staff to create an appropriate service culture in accordance with the policy
- report all alleged or suspected instances of abuse, neglect and exploitation in accordance with the department's *Critical Incident Reporting Policy*
- cooperate with the investigation of any complaint relating to the provision of services
- provide appropriate support to the person making the report.

4. Senior Officers/Executives of Departmentally Delivered and Funded Disability Services

It is the role of the Senior Officers/Executives (e.g. AS&RS Directors, or Directors overseeing service delivery or service delivery contracts) to be verbally advised of any allegations of abuse, neglect or exploitation in their business stream and to oversee appropriate action in response.

It is their responsibility to ensure processes are in place to provide continual improvement in service delivery to prevent, identify and respond to the abuse, neglect and exploitation of clients.

The Senior Officers/Executives must also provide advice through issue escalation pathways.

Reporting to the Police

Services have a key responsibility to clients to ensure any alleged harm that may involve the commission of a criminal offence is reported to the Queensland Police Service (QPS).

It is the responsibility of all staff to immediately raise concerns with their line manager and/or QPS (in urgent circumstances). Any reports to QPS must also be referred to the relevant Senior Officers/Executives.

Each non-government service provider should have its own procedures about who will make a report to police.

Concerns about Harm to Children

Concerns should be assessed and actioned under the CSYW's online Child Protection Guide <https://www.csyw.qld.gov.au/about-us/partners/child-family/our-government-partners/queensland-child-protection-guide>.

Alleged offences by a staff member

Any allegation of a criminal offence by a staff member against a client MUST be reported to the QPS. The relevant Senior Officers/Executives must also refer these matters to the Human Resources for assessment of potential disciplinary breaches.

Alleged abuse by a client

Any allegation of a criminal offence by a client against another client MUST be reported to the QPS.

Specific consideration needs to be given to individual, organisational and systemic issues around client to client abuse. For example, services have discretion not to call police for minor offences where no-one is hurt and the victim does not want police action. However, staff MUST talk with the alleged victim to find out their wishes before making a decision not to report a crime to police.

If the alleged victim is not able to make an informed decision about this, staff should talk with the person's legal guardian or family. The department MUST NOT restrict the access of victims to police, or influence a victim not to seek police involvement.

If a report about a client is made to the QPS, staff MUST communicate that the alleged offender with disability is a 'vulnerable person'. Police then have to arrange a support person is present and adequate support is available before an interview takes place.

Authority:

Disability Services Act 2006

Delegations:

The Assistant Director-General, Disability Connect Queensland is authorised to develop and maintain a procedure supporting implementation of this policy and to apply the allocated human and financial resources to achieving the objectives of the policy.

Critical Incident Reporting Policy

<https://www.communities.qld.gov.au/disability/service-providers/contracting-us>

Human Services Quality Framework

<https://www.communities.qld.gov.au/industry-partners/funding-grants/human-services-quality-framework>

Worker Screening

<https://www.communities.qld.gov.au/disability/national-disability-insurance-scheme/ndis-quality-safeguard-requirements-providers>

Restrictive Practices

<https://www.communities.qld.gov.au/disability/national-disability-insurance-scheme/ndis-quality-safeguard-requirements-providers>

Complaints

<https://www.communities.qld.gov.au/about-us/customer-service-compliments-complaints>

Note: the Human Services Quality Framework provides a quality assurance framework for funded service providers and contains a specific standard in relation to the safety, wellbeing and rights of people accessing services.

Child Abuse Assessment and Referral Guide

<https://www.communities.qld.gov.au/resources/campaign/supporting-families/protecting-children-supporting-families.pdf>

<https://www.csyw.qld.gov.au/about-us/partners/child-family/our-government-partners/queensland-child-protection-guide>

Date of approval: Oct 2020
Date of operation: Oct 2020
Date to be reviewed: Oct 2022

Office: Disability Connect Queensland
Help Contact: Complaints and Investigation Unit

Links:
 N/A

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 Director-General

APPENDIX 1

The department acknowledges that there are many forms of abuse, neglect and exploitation:

DEFINITIONS

- **Abuse** – is the violation of a person’s human rights, through an act or actions of commission or omission, by another person, or persons. Abuse includes, but is not limited to the following:
 - **Physical abuse** – any non-accidental physical injury or injuries to a child or adult, such as inflicting pain of any sort, or causing bruises, fractures, burns, electric shock, or unpleasant sensation (e.g. taste, heat or cold) as well as restrictive practices which are not contained in the client’s positive behaviour support plan.
 - **Sexual abuse** – any sexual contact between an adult and a child 16 years of age or under; or any sexual activity with a person with impairment of the mind (as defined under ‘Definitions’ in the *Queensland Criminal Code*). Sexual activity includes intercourse, genital manipulation, masturbation, voyeurism, sexual harassment, and also inappropriate exposure to pornographic media, etc.
 - **Psychological or emotional abuse** – verbal communication that is threatening or demeaning, threats of maltreatment, harassment, humiliation, intimidation, failure to interact with a person or to acknowledge the person’s presence, or denial of cultural or religious needs and preferences.
 - **Financial abuse** – refers to the illegal or improper use of a person’s property or finances or the withholding of another person’s resources by someone with whom the person has a relationship implying trust.
 - **Chemical abuse** – refers to any misuse of medications and prescriptions, including the withholding of medication and over-medication.
 - **Abuse through denial of access to legal remedies** – denial of access to justice or legal systems that are available to other citizens and denial of informal or formal advocacy support requested by the client or his/her substitute decision maker.

- **Neglect** – is the failure to provide the necessary care, aid or guidance to dependent adults or children by those responsible for their care. Neglect includes, but is not limited to the following:
 - **Physical neglect** – failure to provide adequate food, shelter, clothing protection, supervision and medical and dental care, or to place persons at undue risk through unsafe environments or practices.
 - **Passive neglect** – the failure to fulfil care-taking responsibilities because of inadequate caregiver knowledge, infirmity, or the failure to implement prescribed services.
 - **Wilful deprivation** – wilfully denying a person access to medication, medical care, shelter, food, a therapeutic device or other physical assistance, thereby exposing that person to risk of physical, mental or emotional harm.
 - **Emotional neglect** – the failure to provide the nurturing or stimulation needed for the social, intellectual and emotional growth or wellbeing of an adult or child.
 - **Crimes of Omission** – negligence, i.e. the failure to act with the appropriate duty of care.

Exploitation – is taking advantage of the vulnerability of a person with disability in order to use them, or their resources, for another’s profit or advantage (e.g. financial abuse).