

Freedom from Abuse, Neglect and Exploitation – Policy & Procedure

Issued: 5/02/2020 Stage: Issued

Objective:

To ensure that all people supported within **focus** receive a service in an environment that is free from abuse, harassment, assault, neglect, and exploitation.

To ensure that **focus** responds to and prevents wherever possible the abuse, neglect and exploitation of people with a disability in all of its services.

This policy aligns with relevant legislative requirements, adheres to the National Disability Insurance Scheme Act 2013 and is made in accordance with the following NDIS Quality and Safeguards Commission Standards, Rules, and Guidelines:

NDIS Practice Standards Core Module:

- Division 1 - Rights and Responsibilities: Violence, Abuse, Neglect, Exploitation and Discrimination -
- Division 2 - Provider Governance and Operational Management:
 - Incident Management
 - Feedback and Complaints Management
 - Risk Management
 - Information Management

National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018

National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018

Scope:

All **focus** staff shall be responsible for ensuring that procedures are implemented to prevent abuse, violence, neglect and exploitation.

Policy Statement:

focus will promote and adhere to the human rights of people with disabilities and empower them to exercise those rights.

focus is committed to creating a culture where the safety of people supported is essential to service delivery, and where everyone is committed to preventing abuse and feels empowered to speak up and report abuse.

All workers will undertake training in abuse prevention, client rights and the NDIS Worker's Code of Conduct .

focus will ensure the staff recruitment screening process is thorough, adhering to relevant legislative requirements.

Suspected cases of abuse and/or neglect will be reported, recorded and actioned according to legal, government department and moral obligations.

focus supports a 'Zero Tolerance' commitment to violence, neglect and abuse of people with a disability.

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To operationalise this commitment to Zero Tolerance, **focus** will:

- ensure that the health, safety and wellbeing of people supported in **focus** is the paramount consideration in service provision, with practices that provide maximum protection from abuse, neglect and exploitation
- promote a culture of no retribution in the case of reporting, including reporting of suspected or alleged abuse, neglect or exploitation or incidents suggestive of abuse, neglect or exploitation
- ensure timely, adequate and appropriate responses to incidents
- 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
- create a culture of 'See something, Say something', where workers and clients feel supported to speak up when they witness or become aware of information about an alleged abuse including reporting of suspected or alleged abuse, neglect or exploitation or incidents suggestive of abuse, neglect or exploitation
- develop clear Whistle-blower protections to encourage transparency and prevent abuse from going unreported.

Process Steps:

1 Abuse and Neglect Definitions

Abuse - is the violation of a persons human or civil rights, through an act or actions of commission or omission, by another person, or persons. Some forms of abuse are criminal offences and are punishable by law.

Abuse is any form of violence, coercion, exploitation, discrimination, harm or neglect which causes another person psychological or physical pain or suffering.

Types of abuse include (but are not limited to):

Physical Abuse:

Any non-accidental physical injury or injuries to a person. This includes inflicting pain of any sort or causing bruises, fractures, burns, electric shock, or any unpleasant sensation, eg taste, heat or cold.

Sexual Abuse:

Any sexual contact between an adult and a child; or any sexual activity with an adult who is unable to understand, has not given consent, is threatened, coerced or forced to engage in sexual behaviour. Sexual activity includes intercourse, genital manipulation, masturbation, voyeurism, sexual harassment, and also inappropriate exposure to pornographic media etc.

Grooming:

Concerning predatory conduct undertaken to prepare a child for sexual activity at a later time which applies where an adult communicates, by words or conduct, with a child under the age of 16 years or with a person who has care, supervision or authority for the child with the intention of facilitating the child's involvement in sexual conduct, either with the groomer or another adult. Grooming does not necessarily involve any sexual activity or even discussion of sexual activity.

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This also includes if the victim has an intellectual disability, and when the victim does not have the capacity to make an informed decision about a disclosure, and the person who received the information is aware or should be reasonably aware of those facts.

Psychological or Emotional Abuse:

Verbal assaults, threats of maltreatment, harassment, humiliation or intimidation, or failure to interact with a person or to acknowledge that person's existence. This may also include denying cultural or religious needs or preferences.

Financial Abuse:

The improper use of another person's assets or the use or withholding of another person's resources by someone with whom the person has a relationship implying trust.

Legal or Civil Abuse:

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.

Systematic Abuse:

Failure to recognise, provide or attempt to provide adequate or appropriate services, including services that are appropriate to that person's age, gender, culture, needs or preferences.

Chemical abuse:

Refers to any misuse of medications and prescriptions, including the withholding of medication and over-the-counter medication, or for administering PRN for reasons unrelated to the reason it has been prescribed.

Neglect - is the failure to provide the necessary care, aid or guidance to dependent adults or children by those responsible for their care.

Types of neglect include (but are not limited to):

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:

A caregiver's failure to provide or wilful withholding of the necessities of life including food, clothing, shelter or medical care.

Wilful Deprivation:

Wilfully denying a person who, because of age, health or disability, requires medication or medical care, shelter, food, therapeutic devices or other physical assistance - thereby exposing that person to risk of physical, mental or emotional harm.

Emotional Neglect: The failure to provide the nurturance or stimulation needed for the social, intellectual and emotional growth or well-being of a person.

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Crimes of Omission - the failure to act with appropriate duty of care. Failing to report incidents that have been witnessed.

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

Exploitation often occurs with vulnerable groups such as people with a disability and older people. Exploitation is a form of abuse.

Challenging behaviour - behaviour that places the person or others at risk, and/or reduces the person's access to environments, activities or experiences. This can include aggressive, self-injurious, anti-social or dangerous behaviours.

Behaviour Support Practices

Restrictive Practices: means any intervention that is used to restrict the rights or freedom of movement of a person with a disability including

- (a) chemical restraint;
- (b) mechanical restraint;
- (c) seclusion;
- (d) environmental;
- (e) physical;

These practices become abusive when they:

- Are not approved by the APO as part of a positive behaviour support strategy
- Are not to prevent injury or modify behaviour; and
- Are not part of a holistic plan to modify behaviour; or
- Lead to injury; or
- Are used with excessive frequency; or
- Are used for prolonged periods; or
- Are not the least restrictive response.

NB: Restraint is only to be used when it is included in the person's behaviour support plan and approved by the APO.

Other Restrictive Practices the denial of basic human rights or choices such as religious freedom, freedom of association, access to property or resources or freedom of movement.

focus will ensure policies and processes are in place to minimise and work towards eliminating the use of restrictive practices, and understands that misuse of restrictive practices can constitute a form of abuse.

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2 Prevention of Abuse, Neglect & Exploitation of People with a Disability

focus supports a 'Zero Tolerance' approach to abuse and neglect. Individuals will be protected from abuse and neglect whilst in the care of **focus**.

To prevent abuse and neglect as far as possible, the following shall always apply:

- It is the duty of all staff to report all suspected incidents of abuse or neglect immediately regardless of where the reported abuse or neglect occurred. See something, Say something. This may include at an individual's home or in the community.
- Any allegations of abuse, neglect, exploitation and/or denial of a client's civil rights will be reported and investigated either through internal processes or external agencies as per the Client Incident Reporting Policy and Procedure.
- Staff are provided with this policy and procedure during their induction to **focus** to ensure that all staff are fully aware of their responsibilities relating to abuse, neglect and exploitation and are compliant with them at all times.
- All information provided to clients promotes an awareness of abuse, neglect and exploitation and clearly indicates available avenues of support.
- Any concerned person, including but not limited to, the person with a disability, another client, staff member, 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.
- The guardian or substitute decision maker will be informed of all alleged or suspected instances of abuse, neglect and exploitation except in instances where Management believe that this would place the person with a disability at greater risk.

3 Responding to Abuse, Neglect and Exploitation

Anyone who witnesses or is notified of an incident or allegation of abuse or neglect in relation to a person with a disability should take immediate action

Protect the Person

Make the person who has experienced abuse safe, provide medical assistance as required, and/or remove the source of the harm from the person (eg. other people, harmful objects). Explain to the person what is happening and that it is not their fault. In an emergency call 000 for emergency assistance.

Preserve and Record the Evidence

Where relevant, and especially for criminal acts, maintain the scene of the incident, this includes ensuring people do not enter the area unnecessarily, take photos and protect any personal articles involved. Write down everything you know, this should include a record of allegations and observed instances of violence, neglect and abuse. Ensure relevant documentation is stored securely.

Report the Incident Immediately

Immediately report criminal acts or deaths to the police. Verbally report the incident/complaint as quickly as possible by ringing your manager or **focus** Oncall after hours. The person who witnessed the incident or to whom the allegation is made must document the incident/allegation according to the Client Incident Reporting Policy and Procedure. All information and reports must be kept confidential and protect people's rights and privacy.

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The incident must be reported to the Chief Operating Officer and/or the CEO who will assist establish the nature of the incident and determine the next course of action. In all cases of abuse and neglect the allegation will need to be reported to the police and NDIS Commission, and a copy of the initial allegation/report provided. The CEO or the Chief Operating Officer will liaise with police and NDIS Commission staff, regarding further information or other requirements.

If the victim wishes not to report the matter to police, and has capacity to make this decision, this wish should be respected unless:

- there is evidence aside from the victim's testimony of a crime having been committed, or
- the victim suffered serious harm, or
- the victim's decision was made under duress, or
- the victim or other clients are still at risk of violence or abuse.
- in some situations, organisational policies or service agreements will require the police to be called and these policies should be followed.

Information pertaining to a charge of abuse, neglect, or denial of rights is confidential. Details of the alleged offence must not be shared with any other staff or people.

focus will apply the following principles when responding to abuse:

- Client safety is paramount to all procedures
- Clients will be treated with dignity and respect
- Clients will have the right to self-determination
- Workers understand and enact their duty of care
- Workers have undertaken cultural competency training and are considerate of individual client cultural differences
- All options (legal/police) are considered when responding to abuse
- Clients' confidentiality is respected, however will not be a barrier to action
- Every allegation of abuse, neglect, harm, discrimination and exploitation will be considered and taken seriously

4 Informing and Documenting

Abuse, neglect, sexual misconduct, or unauthorised restrictive practices are defined as reportable incidents under the Section 73Z (4) of the National Disability Insurance Scheme Act 2013.

As such, reportable incidents will be reported as soon as possible to:

- The Chief Operating Officer and/or Chief Executive Officer
- The Customer Relationship Leader, Activities Facilitator and/or an Area Manager - who is responsible for reporting incidents to the NDIS Commission

The Chief Operating Officer will take all reasonable steps to notify the NDIS Commission within 24 hours of becoming aware of the incident.

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Reportable incidents include;

- Death of a person with a disability
- Serious injury
- Abuse or neglect
- Unlawful sexual or physical contact with, or assault of, a person with a disability
- Sexual misconduct committed against or in the presence of, a person with disability, including grooming of such a person for sexual activity
- The use of restrictive practice in relation to a person with disability that is unauthorised use or not in accordance with a behaviour support plan.

Unauthorised restrictive practices will be reported to the NDIS Commission within five days.

5 Contact the Family or Carer

Where the alleged victim consents, or does not have the capacity to make an informed decision about this, their family/carer should be contacted immediately and advised of the situation and all actions taken in relation to the matter.

Do not contact family/carer where:

- A criminal investigation is in progress or soon will be, and the police advise that the family/carer is a witness or a suspect in the investigation.
- The alleged victim has a guardian, in which case the guardian should be informed about the matter and consulted as to whether it is appropriate for a family member or carer to be contacted.
- It is alleged that the family/carer are the perpetrators of the abuse and contacting the family may increase the risk of harm to the person.

Where they have been contacted, the family/carer should be kept informed about the progress and outcomes of any investigations.

6 Investigations

focus will conduct an investigation as soon as possible which will not be carried out by anyone suspected of being involved in the incident. A preliminary assessment may be necessary to determine the scope and conduct of the investigation, including whether an external investigator should be engaged.

If a police investigation occurs, an investigation must still be organised by the organisation with the relevant duty of care to the person. Agreement about the timing and scope of the **focus** investigation should be reached with police before proceeding.

The **focus** investigation process must include a full review of the incident and all subsequent actions to determine the effectiveness of the response and to highlight good practises and actions that may be implemented to minimise the risk of the situation re-occurring.

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This may include **focus** undertaking disciplinary or other appropriate actions, such as:

- counselling for the staff member;
- additional training;
- transfer of duties;
- increased supervision;
- official warning;
- dismissal.

The outcome and any subsequent actions of the investigation and response must be documented and kept secure. Access to this information must be restricted to those that have a proper or lawful right to the information.

Before **focus** takes any action it must ensure that the perpetrator has been afforded natural justice and that any action or decision by **focus** is based upon a full and documented consideration of the facts, context, intent and the impact of the original incident.

7 The Alleged Offender is a Staff Member

The Chief Operating Officer and/or the CEO must ensure that all reasonable steps are taken to avoid contact between the person thought to have been subjected to abuse, assault or neglect and the alleged offender.

This may involve:

- supervision of any interactions;
- immediate allocation to alternative duties;
- immediate suspension from duties, depending on the nature of the circumstances.

The Executive Manager People Culture and Safety will implement the following:

- immediate suspension from duties on full pay until a full investigation into the incident is held;
- notify Worker Screening

focus will ensure that the legal rights of the employee are met according to natural justice and applicable industrial instruments.

8 The Alleged Offender is an Outside Worker

focus will ensure that where possible, all interactions will be avoided or will occur only where it is required and under appropriate supervision. (FOC) **focus**

9 The Alleged Offender is a Client of the Service

Managers will develop and implement a plan to prevent contact between the person alleged to have been subjected to abuse, assault or neglect and the alleged offender. This may include relocation of the alleged perpetrator, the alleged victim, or both.

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The plan should ensure:

- staff member supervises any interactions between the person and alleged offender;
- assistance is offered to both parties in their interactions with the police or other relevant organisation or authorities;
- both parties are provided with appropriate accessible information about their legal rights, options, and support services; or be given the opportunity to access this information.

focus will also ensure the alleged offender has access to a support person or advocate who can assist them with the investigation and interview process and facilitate legal representation. The advocate or support person should be someone who is without prejudice and where possible chosen by the alleged offender.

10 Support for Clients

In instances where a client reports abuse or neglect, staff will ensure that the following occurs:

- the client is offered support of their choice
- listen non-judgmentally to what is being said
- take the disclosure seriously
- say something like: "I'm glad you told me. It is a brave thing to do"
- tell the person it is not their fault
- explain clearly the process that will be followed after the discussion

focus will ensure that the person subjected to abuse or neglect, is provided with and/or assisted to access opportunities for support, counselling and/or debriefing.

If a sexual assault has occurred, or is suspected, support may be sought from the Centres Against Sexual Assault by telephoning 1800 806 292.

If family violence has occurred, or is suspected, support may be sought from the Women's Domestic Violence Crisis Service on 1800 015 188.

If any person alleges violence, neglect or abuse in relation to a Victorian disability service, contact may be made with the NDIS Quality and Safeguards Commission. The Commission can respond to complaints or provide advice on what further steps may assist the person.

If, at any stage, there are doubts or questions about responding to an instance of violence, neglect or abuse, call the Office of the Public Advocate's Advice Service during business hours on 1300 309 337.

The person should be encouraged and supported to make statements to police and other independent investigators. For example, appropriate support may be sought from agencies including the Centres Against Sexual Assault, independent advocacy organisations and the Federation of Community Legal Centres.

- If a police investigation occurs, and the person has a cognitive impairment or mental illness, police should ensure that an Independent Third Person is present at the Video and Audio Recorded Evidence police interview. Independent Third Persons will assist the person to understand their rights and support them through the process.
- Ensure the person is kept informed of actions taken and the progress of any investigation.

Plan for the provision of ongoing support to the person, as their needs and responses to the matter may change and the option of referrals may need to be revisited.

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There are some useful resources available:

- The National Disability Abuse and Neglect Hotline on 1800 880 052 provides assistance in deciding how a complaint might be raised and resolved at a local level. Calls may remain anonymous. In most instances they will refer back to funding bodies of government funded disability services.
- www.tellsomeone.org.au provides a range of short educational videos about different forms of family violence experienced by people with a disability.

11 Support for Employees

Supporting a client in cases of abuse and/or neglect can be stressful and it essential that staff take responsibility for accessing the support that is available to them. This will include:

- ongoing direct support from their manager (and the Executive team) in the management of the case of abuse and/or neglect;
- the Employee Assistance Program (EAP) for additional emotional support or debriefing;
- opportunities to attend training (eg. dealing with difficult behaviours, communication, self-protective behaviours etc).

focus staff should be aware that support, counselling and debriefing may also need to be provided to other clients or to families and carers or advocates of the victim(s).

12 Disability Workers Exclusion Scheme

The Disability Worker Exclusion Scheme (DWES) was introduced by the Department of Health and Human Services (DHHS) Victoria to protect the safety and wellbeing of people with a disability.

focus is committed to ensuring that all employees and agency staff are screened against the Disability Worker Exclusion List (DWEL) and that they meet the requirements of the check.

Any allegation of abuse and neglect by a member of **focus** staff, will immediately be notified to the DWES Unit.

The NDIS Commission is working with state and territory governments to develop an NDIS Worker Screening Database to support the NDIS Worker Screening Check.

The database will:

- have a register of cleared and excluded workers from all states and territories to enable national portability of clearances
- support national ongoing monitoring of the criminal history records of workers with clearances
- mean NDIS providers across the country can go to one place to sponsor applications and verify the clearances of prospective workers, without needing to contact individual states and territories' worker screening units
- help NDIS providers with record-keeping requirements.

The NDIS Worker Screening Database will commence operation as the NDIS Worker Screening Check is rolled out in each state and territory. It is expected to be in place in Victoria as of 1 July 2020.