

**Guidelines for the Prevention and
Management of Abuse in Disability Support
Services' Funded Services**

July 2015

CONTENTS

1. Purpose	5
2. Background	5
3. Key Principles in Safeguarding Individuals.....	7
3.1 People are individuals who have the inherent right to respect for their human worth and dignity.....	7
3.2 People have the right to live in and be part of their community and receive supports that provide the least restrictive option.....	7
3.3 People have the same rights as other members of society to participate in decisions which affect their lives	7
3.4 People have the right to pursue any grievance in relation to services without fear of the services being discontinued or any form of recrimination.....	8
4. Understanding Abuse	8
4.1 Forms of abuse.....	9
4.2 Indicators of abuse.....	9
4.3 Perpetrators of abuse	10
5. Prevention of Abuse in DSS Funded Services	11
5.1 The role of behaviour support in prevention.....	14
5.2 The role of supported decision making.....	14
6. Expectations of Providers – Responses to Situations of Alleged Abuse.....	15
6.1 Development of feedback and positive complaints culture.....	15
6.2 Policies and quality systems	15
6.3 Fictional case study 1	16
6.3 Fictional case study 2.....	17
7. Care Recipients under the ID(CC&R) Act	17
7.1 Fictional case study 3.....	18
8. Individuals with Complex Care Needs.....	18
8.1 Fictional case study 4.....	19
9. Safety and Wellbeing for whānau Māori; Te Oranga whānau	19
9.1 Fictional case study - 5.....	20
10. Safeguarding for Pacific Peoples.....	20
11. The Ministry and Safeguarding	21
11.1 Service specifications	21

11.2	Reporting	22
11.3	Role of audits and evaluations	22
12.	The Role of Legislation and REgulation	23
13.	The Role of Other Agencies	24
13.1	The Police.....	24
13.2	Health and Disability Commissioner.....	24
13.3	Office of the Ombudsman	24
13.4	District Inspectors.....	25
14.	Summary	25
15.	Appendices	26
15.1.	Organisational Policy Template.....	26
15.2.	Available resources in the community.....	26

EXECUTIVE SUMMARY

The Ministry of Health believes that people supported by Disability Support Services (DSS) funded services should be provided with supports that enable them to have the best possible life that they can have. This means supports that allow them the greatest choice, flexibility and control and upholds their rights as contributing community members. It also means that they are supported to live a life free from exploitation, neglect or abuse. Abuse can take many forms including physical, sexual, verbal, emotional, financial and organisational.

When disabled people within services are abused there is an impact on the confidence of disabled people and their families in the services that the Ministry contracts and funds. The Ministry, along with providers, have a duty of care to ensure that any actions or lack of actions do not cause injury or harm to disabled people that they support. They also have a responsibility to ensure that people experience the dignity of risk just like other members of the community. Providers play a vital role in fostering a culture in which disabled people are respected and valued and one which significantly decreases any opportunities for abuse to occur.

ACKNOWLEDGEMENTS

1. PURPOSE

The information in this Guideline has been developed to provide clear and effective guidance to you as a DSS funded provider in the promotion of safeguarding the disabled people who receive support in your services. This includes those services within aged care services.

This Guideline supports providers to comply with the Ministry of Health's Outcome Agreement and service specifications for community support services, including children's support services, foster care and contract board (available on the MOH website).

Safeguarding involves the prevention of abuse, creating a better understanding of signs that abuse is occurring and the development of appropriate and responsive systems to deal with incidences of abuse. These will be detailed later in the document. What this means in reality is that as a provider you will:

- have strategies and safeguards in place in terms of how you support the disabled people in your service
- ensure that both staff and disabled people understand what abuse looks like
- ensure that where abuse occurs that the person is supported appropriately and incidents are reported
- have a process of debriefing and review when abuse does occur, to learn from the situation
- ensure that strategies are put in place to prevent recurrence.

2. BACKGROUND

Historically, many disabled people lived in institutions in New Zealand and particularly those with psychiatric or intellectual disabilities. The New Zealand government responded to the international movement of deinstitutionalisation in 1985 with a gradual move to community based services for people with intellectual disability.¹ The reasons for deinstitutionalisation were complex and included both cost drivers and drivers relating to an increasing awareness of human rights. One of the reasons the government decided to move disabled people from institutions into the community was the quality of care that was provided by these institutions particularly in relation to the level of abuse that occurred for disabled people whilst in these institutions.²

With a move to the community many people expected that disabled people would be more integrated into the community and be supported more effectively. Unfortunately situations of abuse have continued to occur for many disabled people. Disabled people

¹ O'Brien, P., Thesing, A., & Capie, A. (1999). *Living in the community for people with a long history of institutional care*. Auckland: Auckland College of Education.

² Milner, P. (2008). *An examination of the outcome of the resettlement of residents from the Kimberly Centre*: Donald Beasley Institute.

should not find themselves in situations where they have a heightened risk of violence, abuse, neglect and exploitation simply because they are disabled people. There are also certain kinds of abuse that are particular to those disabled people who rely on others. Being reliant on others to meet support needs or understand their form of communication creates a power imbalance for disabled people in relation to the staff who support them. This power imbalance has been shown to increase opportunity for abuse in some situations. It is essential that disability support service providers have an understanding of the known risks and indicators of abuse.

In December 2013 the Ministry of Health (the Ministry) published an independent review called 'Putting People First: A Review of Disability Support Services Performance and Quality Management Processes for Purchased Provider Services'³ (the PPF review). The review examined the effectiveness of current Ministry performance and quality management processes for disability providers. It was initiated following the identification of a number of significant quality issues within DSS funded services.

The external review panel was asked to "test if the current processes involved in evaluating, monitoring and managing complaints by National Services Purchasing, support provider improvement and the safety and wellbeing of people with disabilities." The report identified that inadequate monitoring can maintain disabled people's vulnerability to abuse, stating:

"For disabled people to be safe, the systems that safeguard their wellbeing must be designed with an attitude of putting people first. In line with the leadership role the Ministry has in overseeing the safety and wellbeing of disabled people, and setting the tone for the future, there is a need for the Ministry to:

- put disabled people first in all future decisions and actions relating to services
- support providers to place disabled people at the centre of their service – and design it from this premise out
- lift the culture of the sector, by supporting good performance and the achievement of best outcomes.

In short, the message the Ministry must communicate is that the safety of disabled people is paramount and that anything less than this will not be tolerated."⁴

In line with both the New Zealand Disability Strategy (NZDS) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),⁵ the Ministry supports a culture that reflects valuing and respecting disabled people as being full citizens of

³ Karen Van Eden. 2013. *A Review of Disability Support Services Performance and Quality Management Processes for Purchased Provider Services*. November 2013. Wellington: Ministry of Health.

⁴ Karen Van Eden. 2013. *A Review of Disability Support Services Performance and Quality Management Processes for Purchased Provider Services*. November 2013. Wellington: Ministry of Health, p.1.

⁵ Ministry of Health. (2001). *The New Zealand Disability Strategy: Making a world of difference; Whakanui Oranga*. UNCRPD, 2006, NZ ratified 2008 - check

our community. The Ministry has a zero tolerance of abuse of disabled people experiencing Ministry-funded disability support services.

3. KEY PRINCIPLES IN SAFEGUARDING INDIVIDUALS

Principles can provide a platform for an organisation to develop prevention strategies and policies detailing responses to situations of abuse. The Disability Support Services Tier 1 Service Specification has a number of principles outlined that are relevant. These principles reflect our commitment to the UNCRPD, the NZDS and the Disability Action Plan. These include but are not limited to:

3.1 People are individuals who have the inherent right to respect for their human worth and dignity

Violence against and exploitation of disabled people must be investigated and prosecuted in the same way as for non-disabled people. The Ministry, providers and the disability community must all demonstrate a zero tolerance to all forms of abuse. This includes abuse perpetrated by support staff and disabled people against other disabled people. The Ministry, and in particular DSS, expect that you as a DSS funded provider will do everything you can to operate from a place of zero tolerance. This should be demonstrated through all levels of your organisation. It must be reflected in your systems, policies and responses to situations of abuse.

3.2 People have the right to live in and be part of their community and receive supports that provide the least restrictive option

This means that the people we support are entitled to receive services that support them to make choices and live a full life without greater risk of harm than other New Zealanders. It also acknowledges that individuals are capable of making decisions and must have authority over what happens to them in any given situation. In some instances disabled people will need support to make informed decisions.

3.3 People have the same rights as other members of society to participate in decisions which affect their lives

Disabled people must be supported to manage risks in their lives in a way that best works for them with a dignity of risk. What might seem to be a risk for one person might not mean the same thing for another person. Any responses by way of support, supervision or any level of restriction must be proportionate to the risk.

3.4 People have the right to pursue any grievance in relation to services without fear of the services being discontinued or any form of recrimination

Services need to have a positive complaints culture that encourages people to speak up without fear that there will be a negative consequence for them. Fear of speaking out or having support to speak out has meant that in many cases abuse has gone unreported.

4. UNDERSTANDING ABUSE

Compared to the general population, disabled people experience a significantly higher level of abuse.⁶ Whilst anecdotally understood to be commonly experienced by disabled people, there has been little published research into this issue in a New Zealand context. It has certainly been highlighted internationally that disabled people are systemically and specifically vulnerable to abuse by people they know and by those who provide care for them⁷. In essence exploitation and abuse is a violation of the rights of disabled people.

A study by Roguski (2013) was commissioned by the Tairāwhiti Community Voice, a collection of community agencies in the Gisborne region. The research was intended to develop a better understanding of the many ways that abuse is manifested in relation to disabled people. It also aimed to provide a better understanding of the structures that prevent disabled people who were experiencing abuse from speaking out. The research confirmed that disabled people are much more likely to experience abuse than the general population. It also illustrated that disabled people experience a number of challenges in reporting abuse including fear of losing supports, previous experience of not being believed, communication difficulties, a general lack of respect and not understanding their own rights.

In approaching incidents of abuse, a broad understanding of what constitutes abuse must be demonstrated. Whilst some forms of abuse are explicit, obvious and acute, other forms of abuse can be more subtle and harder to detect. It is also hard to determine at times the boundary between poor practice and abusive practice. Poor practice undetected can become abusive by nature.

⁶ Mirfin-Veitch, B., Diesfeld, K., Gates, S., & Henaghan, M. (2014). *Developing a more responsive legal system for people with intellectual disability in New Zealand*. Dunedin: Donald Beasley Institute.

⁷ Hague, G., Thiara, R., Magowan, P., & Mullender, A. (2008). *Making the links: Disabled women and domestic violence, the final report*.: Women's Aid.

4.1 Forms of abuse

To abuse someone is to harm or hurt them in some way or violate their human or civil rights. Abuse can take many forms including but not limited to:⁸

Physical abuse – A wilful act carried out with the intent of causing pain or injury by staff or others against disabled people. Includes hitting, punching slapping and burning

Sexual abuse – forcing someone to take part in sexual activity against their will

Verbal abuse – disrespectful, derogatory or demeaning language used either about or in conversation with disabled people. Language that depicts disabled people as less important, childlike or in some inferior to others.

Emotional abuse – includes verbal threats, harassment or intimidation of a person. Emotional abuse can also occur through disabled people not being able to make independent decisions and determine their own identity. It can also occur through restricting the social, intellectual and emotional growth or wellbeing of a person

Financial abuse – the wrongful use of another person's assets or denying a person the use of his or her own assets

Neglect and poor practice – Service provider not providing the essentials for life such as adequate nutrition, medication and other health requirements, adequate heating and fresh air. Not meeting disability needs, not providing necessary equipment or support

Restrictive practices – restraining or isolating someone other than for medical necessity or to prevent immediate self-harm

4.2 Indicators of abuse⁹

Indicators of abuse include both physical and behavioural signs. The following can be a potential sign of abusive practice.

Behavioural indicators can include:

- Extreme changes in behaviour, for example, challenging behaviours might suddenly appear or people may become withdrawn.
- Being fearful of other adults, residents or caregivers.
- Showing anxiety that is out of character.

⁸ Kruger, Robert M., and Christopher H. Moon. "Can you spot the signs of elder mistreatment?" *Postgraduate medicine* 106.2 (1999): 169-73.

⁹ Recognise indicators and describe responses to suspected abuse of people using health or disability services, Careerforce Workbook US 1836 Level 3.

- Being reluctant to accept assistance with personal cares.
- Uncharacteristic anxiety, nervousness or defiance.
- Loss of self-esteem.
- Regression, such as bed wetting.
- Being tearful or sad.
- Showing signs of risk of self-harm or suicide.
- Being overly focused or hyper-vigilant about things they wouldn't normally be.

Behavioural indicators relating to money can include:

- Being unable to buy things they would normally be able to
- Being confused about where money or belongings have gone or being unwilling or unable to explain where money or belongings have gone
- Withdrawing money more frequently or in larger amounts than usual
- Wanting to give things or money away or make changes to their will

Physical indicators:

- Unexplained bruises and/or other injuries
- Frequent complaints of aches and pains
- Unusual weight loss or gain
- Frequent visits to the emergency department or a doctor with injuries
- Increased physical signs of anxiety
- Unusual incontinence
- Physical withdrawal – flinching on approach
- Sleep disturbances
- Lack of eye contact

4.3 Perpetrators of abuse

Abusive acts can be committed by a range of individuals in a variety of situations. Most commonly this is by staff against people being supported in a service or by disabled people against other people residing in the service

Whilst different approaches may be taken in each situation the priority remains the same. The safety of the individual is paramount. The first response is generally to ensure the alleged perpetrator must be kept away from the victim and then appropriate contacting takes place including involving the police where a criminal offence has occurred or other agencies.

5. PREVENTION OF ABUSE IN DSS FUNDED SERVICES

A recent paper by the Disability Services Commissioner called “Learning from Complaints: Safeguarding People’s Right to be Free from Abuse,”¹⁰ in Victoria, Australia identified a three tiered approach to the prevention of abuse of disabled people. The first related to the strategies designed to prevent abuse from happening in the first place. The second related to how abuse will be identified and dealt with. The third focused on how to address the harm caused by the abuse and reflect on learnings from any situation that would be used for further prevention. This three tiered approach provides a useful framework for the prevention and management of abuse for both the Ministry and service providers.

The paper notes the importance of creating a service culture that has an emphasis on a person-led approach with the person themselves exercising choice and control over decision-making about their life. This philosophy is consistent with the United Nations Convention on the Rights of Persons with Disability, and broader moves in the Ministry and the disability sector to ensure that supports enable disabled people to have the life of their choice.

In response to both a ministerial directive, and the recommendations in the Putting People First Review, an external working group (Working Group) was established to review safety regulation in disability support services. The purpose of this group was to “develop proposals for changes to the regulation of disability support that will enable disabled people to make choices and live everyday lives without greater (or lesser) risk of harm than other New Zealanders”¹¹.

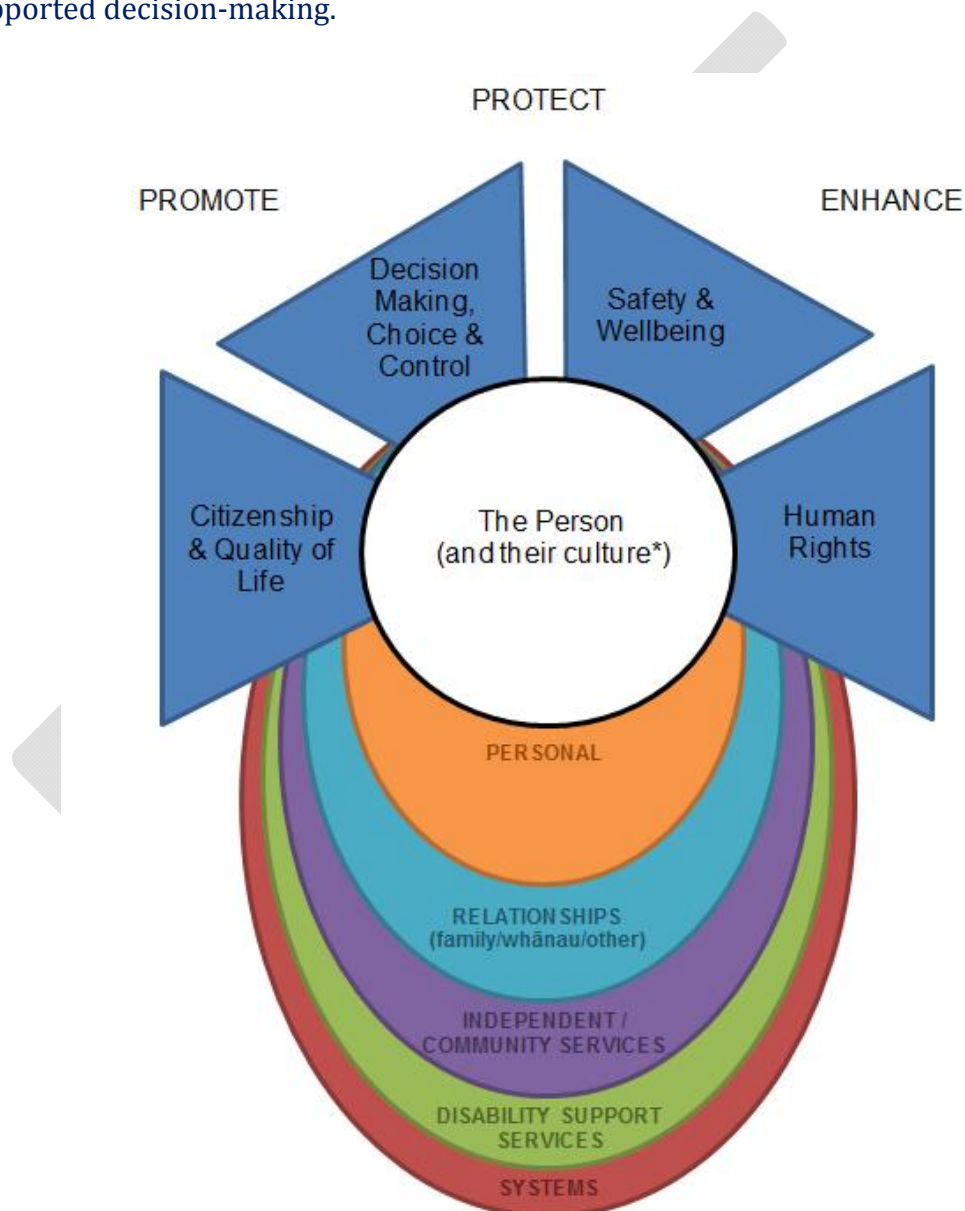
This Working Group utilises a Safeguarding Spectrum (adapted from a Western Australian Disability Services Commission Position Paper on Individual Safeguarding) that views regulation as part of a wider spectrum of safeguards, which range from personal or relationship based safeguarding through to system level safeguarding (see diagram below).

Legal regulation is one potential safeguarding mechanism, but there is a wide range of other mechanisms available, both informal and formal, including building and supporting relationships; education and awareness-raising; independent advocacy services; and contractual safeguards.

¹⁰ Disability Services Commissioner. (2012). Learning from Complaints: Safeguarding People’s Right to be Free from Abuse, Occasional Paper No.1.

¹¹ *Reference terms of reference from working group.*

The Safeguarding Spectrum places the person at the centre with systems of support and safeguarding around them. Responses will vary depending on the level of safeguarding needed in a particular situation. Some safeguards may happen at the personal or family level, for example, ensuring a person has an understanding of their human rights so they can safeguard themselves. Other safeguards may happen at the disability support service level in terms of staff training. In some cases system-based safeguards may be required, for example governance, which includes disabled people and their families to oversee the full system of support and identify support gaps and issues that may create risk. An example of a specific current gap is the lack of understanding and use of supported decision-making.



*Everyone has a way of doing things
that is right for them and their family.

Some suggestions about how an organisation can implement a safeguarding culture include:

Vision and Values - Explicitly stated organisational vision and values that reflect a culture of supported decision-making, choice and control for individuals supported by the service and a zero tolerance of abuse. The governing body of an organisation has a responsibility to ensure that the vision and values of the organisation is being implemented. This can involve them regularly talking with people using the service.

Social Context - A demonstrated understanding of the role that discrimination plays in the lives of disabled people and the impact of the systemic devaluing of disabled people. Demonstration of the organisation's commitment to a strengths based approach and implementing the UN Convention on the Rights of Persons with Disabilities.

Recruitment, Orientation and Training - Recruitment practices for staff that both attracts and engenders the right values and attitudes. Focusing not just on qualifications and skills when recruiting but attracting and/or engendering core values such as the ability to empathise and respect people's rights. The inclusion of service users on interview panels can be a useful strategy but must not be a tokenistic exercise. This must happen in a way that fosters meaningful engagement in the decision making process.

Support Models - Demonstrating an individualised model of support that is led by the disabled person as much as possible, and identifies any particular risks or vulnerabilities to abuse.

Natural Supports - Demonstrating a support model that focuses on community integration and connections with family. Social isolation leads to significantly increased vulnerability to abuse. Relationships with people outside the service allows for a level of independent safeguarding. People outside the service do not need to balance the rights of the individual against the needs of an organisation. Independent safeguarding occurs through connections with family and friends, family of other people living in the service, work colleagues and through links into the community. Such individuals can sometimes recognise problematic situations that the person themselves may not.

Advocacy - Systems of advocacy through internal consumer groups and/or links with external advocacy agencies, such as Disabled Persons Assembly, People First and the National-Wide Advocacy Service. Use of rights based education and training for service users, delivered by disabled people, can be an effective method of safeguarding.

Training and Supervision - Clear and effective training and supervision practices for staff that focus on:

- Respectful approaches and self-reflective practice. Support staff need the opportunity through supervision to reflect on the manner in which they support disabled people and identify any learning opportunities.
- Developing coping strategies in relation to challenging behaviours and developing effective behaviour support practices, including where restraint protocols are in place.
- Understanding codes of conduct and the requirement for increasing levels of professionalism.
- Understanding the way people communicate and engaging with them to know how they want to be supported.
- Understanding the UN Convention on the Rights of People with Disabilities and how to implement this in the workplace.
- Understanding what constitutes abuse, and how to report, manage and prevent recurrence of abuse.
- Ensuring that staff are not working too many shifts or working in isolation.
- Alignment with the Let's Get Real: Real skills for people working in disability 2014, Te Pou o Te Whakaaro Nui.

Reporting – Having mandatory reporting policies and clear processes for reporting abuse in multiple formats such as easy read.

5.1 The role of behaviour support in prevention

Effective behaviour support can play a role in the prevention of situations of abuse. Some people may present with challenging behaviours that can create increased levels of risk in terms of abuse as support staff may struggle with managing some of these behaviours. A positive behaviour support approach is supported by the Ministry as an effective evidenced based model. This model is characterised by an individual approach to behavioural management. Positive behaviour support utilises a cycle of intervention, evaluation, adapting the approach used to reduce behaviours of concern and teaching alternative behaviours to replace challenging ones. This is particularly important in situations where a restraint protocol may be in place as any hands on intervention will always come with risk of harm to the person being supported. By equipping staff with effective coping strategies providers can minimise the potential for the use of aversive or overly restrictive practices. Such practices can be both harmful and potentially abusive.

5.2 The role of supported decision making

Supported Decision Making is a model for helping people with disabilities, often cognitive disabilities, to make significant decisions in their lives and ultimately exercise their legal capacity. Article 12 of the UNCRPD directs that disabled people are supported to exercise legal capacity in the same way as other people in the community. In addition New Zealand has been given a direction from the UN that supported decision making

needs to replace substituted decision making. To make a decision, disabled people may draw on a network of support to help them understand relevant information and consider pros and cons in making a decision but the decision will be theirs. They have the right to seek help from family, peers or independent advocacy services.

6. EXPECTATIONS OF PROVIDERS – RESPONSES TO SITUATIONS OF ALLEGED ABUSE

6.1 Development of feedback and positive complaints culture

The Putting People First Review states that ensuring disabled people have a voice require:

Ensuring the processes that capture complaints, incidents, and issues, do so in a way that: (i) keeps disabled people safe, and (ii) resolves the complaint or issue.

A number of factors have a systemic impact on how safe disabled people and/or their families are to speak up, the key one being knowing they *are* safe. This sense of safety arises from:

- (i) knowing they will be listened to
- (ii) knowing complaints will be acted on and resolved, and
- (iii) knowing action will be taken to remove the perpetrators of the abuse from situations where they can continue to harm others.

The Ministry expects that organisations have or will develop a feedback culture in which service users are encouraged to voice any issues that they experience without fear of reprisal and have the opportunity to give regular feedback. Safe feedback systems and a positive complaints culture can prevent abuse situations from occurring by providing an intervention in response to the earliest indicators of a problem. Complaints processes need to be clear and intentional as individuals may not be aware of their rights to complain.

6.2 Policies and quality systems

The Ministry expects that organisations will have quality assurance processes in which incident debriefing and feedback lead to quality improvement. We expect that service providers will have quality systems that reflect how serious incidents including those of alleged abuse will be managed in detail. This should include strategies, based on learning from the event, to prevent further incidents. It is vital however that reviews and investigations of situations of abuse are not limited to a procedural approach but also focus on service culture and values. The Ministry has a number of key expectations in the development of policies in response to situations of abuse:

- That the immediate safety of the individual is paramount
- That the alleged perpetrator will be immediately removed from the location where the targeted service user is
- That the person's family is informed as soon as possible
- That the police will be contacted where alleged abuse represents a breach of the law
- That the service user is supported to access any necessary follow up support following the incident e.g. advocacy services, medical assessment, counselling, buddy support. Such support is the abused person's right
- That the Ministry will be notified of the event and any follow up
- That situations of abuse are reviewed to establish how similar events can be prevented in future

6.3 Fictional case study 1

Sara lives in a house with flatmates who also have disabilities. She has supported living for 20 hours a week to help her with things like cooking and cleaning. Sara likes most of her flatmates but has one that she is a bit scared of. For some time he has been making comments to her about her body and making her feel uncomfortable by standing too close to her. The support worker notices she is getting a bit withdrawn and sad but doesn't really know why. Family are also worried about her. They put it down to just being a bit down and take Sara to the doctor to see if she should go on antidepressants. Sara does.

One night Sara's flatmate comes into her room and sexually assaults her. Sara blames herself and doesn't know what to do. She keeps it to herself. She tells her support worker she wants to move but her support worker tells her that it will be really hard to find somewhere else for her to live. A couple of months later she is talking to her mum and discloses what happened. Her mum contacts the police who come and talk to Sara and her mum but decide not to proceed with any charges because they are concerned that Sara will not be a good witness. Because of the time passed there is also a lack of physical evidence. Sara's mum takes her to live at home with the family until she can find somewhere else to live. The flatmate who assaulted her remained in the house.

Q – As a provider, what could you have done to ensure a different outcome for Mary?

6.3 Fictional case study 2

David is a deaf blind man in his 40s. He lives alone and has a support worker coming to his home once a week to provide household management, such as help with cleaning and purchasing groceries. David's preferred method of communication is via his computer, which has a Braille display attached. However despite his advising the NASC on several occasions that he cannot use the phone (which he only has for emergencies) and does not always know when someone is at the door. He has had to reapply for household management because his lack of response to callers has led to his losing his support. David had to complain to the NASC recently, because his support worker was arriving late and leaving early. He also believes that money and small personal items have gone missing on several occasions after the support worker has been.

Q – As a provider, what could you have done to ensure a different outcome for David?

7. CARE RECIPIENTS UNDER THE ID(CC&R) ACT

DSS funds Regional Intellectual Disability Supported Accommodation Services to provide care and rehabilitation to care recipients subject to the Intellectual Disability (Compulsory Care & Rehabilitation) Act 2003(IDCCR). Care recipients may be subject to a range of restrictions in terms of their freedom of movement and required levels of supervision whilst under compulsory care. This may mean that they have less ability to make independent decisions. As a result support staff have an increased level of power as they are responsible for day to day decision making regarding the activities and movement of the people they support. These people may also present with challenging behaviours based on their backgrounds and reason for being in the service. This can create increased levels of risk in terms of abuse as staff may struggle with managing some of these behaviours. The IDCCR does provide protective mechanisms in terms of care managers who have legal responsibility for their care whilst in a service and District Inspectors who will be described in more detail later in this document.

7.1 Fictional case study 3

Mary is subject to a compulsory care order under IDCCR. She has come under the framework following charges of assault and arson. Mary has had many experiences of abuse in her life starting with an uncle when she was three. For the last few months Mary has had a staff member coming into her room during the night and sexually assaulting her. Mary knows this is wrong has asked the staff at the house to make sure she is not left alone with the particular staff member or in fact any male staff members. Due to challenges in the service in terms of finding enough staff this did not happen. The abuse continued. Eventually Mary disclosed and the police were contacted. There was a court case and the abuser was not convicted based on lack of physical evidence of the abuse occurring.

Q – As a provider, what could you have done to ensure a different outcome for Mary?

8. INDIVIDUALS WITH COMPLEX CARE NEEDS

Some individuals who are supported in DSS funded services have multiple disabilities and as a result have complex care needs. This may include having a moderate or profound intellectual disability, significant physical health needs and/ or non-verbal communication. These individuals may have an increased vulnerability to abuse from others due to the significance of their disabilities and their extreme reliance on support staff.

Providers can increase the safety and wellbeing of this group through a number of strategies. The first is ensuring a culture of respect in their organization. As stated in the Putting People First Review it is vital that organisations employ staff who are able to:

- communicate with those who are unable to verbalise, using whatever form of communication works for the person, and recognise what different behavioural signals mean
- connectedness with family and have an understanding from them of any areas that may indicate concerns or change in behaviour
- provide appropriate behavioural support
- provide the necessary clinical input ¹²

It is only through both recognising and addressing complex needs that providers will ensure safety and wellbeing for this group.

¹² Karen Van Eden. 2013. *A Review of Disability Support Services Performance and Quality Management Processes for Purchased Provider Services*. November 2013. Wellington: Ministry of Health, p.1.

8.1 Fictional case study 4

Jane is a bright young woman who is a wheel chair user. Jane lives independently with support. She has some complicated health issues resulting in support needs that require a support worker for several hours a day. Jane has had a few changes in support worker due to people leaving. She currently has a support worker who doesn't have a lot of experience and sometimes makes mistakes when lifting her and trying to help her get changed. The support worker has on a number of occasions expressed frustration towards Jane and been rough in her physical handling of Jane which has resulted in bruising. The support worker implied this was Jane's fault telling her that she bruised too easily.

Recently, the support worker did not turn up for the morning shift and Jane was left in her bed for the entire day. This was very upsetting for Jane. She called the support agency but they were not able to get anyone else out to replace her support worker till later that night. The support worker turned up the next day and appeared angry with Jane hardly talking to her and using one word answers when spoken to. Jane regretted having complained and was worried they wouldn't be able to find her someone else if this support worker left.

Q – As a provider, what could you have done to ensure a different outcome for Jane?

9. SAFETY AND WELLBEING FOR WHĀNAU MĀORI; TE ORANGA WHĀNAU

Safeguarding for Māori requires many of the same systemic responses described above. Safety and wellbeing for Māori also relies on ensuring that individuals are supported to have strong links with their culture, whanau and identity through whanaungatanga (support and growth of relationships) and understanding their whakapapa (genealogy). Such links provide natural safeguarding for Māori. As providers you should include Tikanga Māori as part of working and supporting Māori who live in your service.

This can include:

- cultural responsiveness of services - e.g. the support of kaumātua to pōwhiri the person and their whānau into the service
- Supporting people in your services to connect with their whakapapa - whānau, hapū and iwi
- Practice of tikanga Māori. i.e. karakia, mihihihi, powhiri, waiata and Māori cultural activities to protect the wairua of disabled Māori
- manaakitanga - caring, nurturing
- rangatiratanga – ensuring personal sovereignty and self-determination

- inclusion of whānau in development and monitoring of personal plans, and encouraging them to have meaningful relationships with their disabled whānau
- Mahi whakapai wairua - cultural practices to protect the wairua of that person as a whānau member and uri (descendant) of their whakapapa; acknowledgement of the connection to their tūpuna (ancestors)
- A key premise is that we need to care for (assist in a healing process) a person's wairua (spirit), hinengaro (mental/emotional faculty), tinana (physical body) and their whānau i.e. Te Whare Tapawhā model. When a situation of abuse occurs for disabled Māori it is likely that some form of cultural healing process will be necessary.

9.1 Fictional case study - 5

Rewi is a young man with an intellectual disability who lives in a disability residential service. Rewi is Māori and was looked after by his brother prior to coming to the service. His brother can no longer look after him due to being in prison. Rewi has other family who he has lost contact with. Rewi has been bullied by one of the support staff for some time. This particular staff member tells him he is dumb, useless and that he will end up just like his brother. The staff member also encourages one of the other people living in the service, Adam to bully Rewi telling them both that Rewi is younger and much less important than Adam who has been living in the service for longer. Rewi told the house leader that he was being bullied but the house leader told him that it was all just jokes and he should harden up.

Q – What could have been done to better support Rewi and to provide a different outcome?

10. SAFEGUARDING FOR PACIFIC PEOPLES

New Zealand based Pasifika peoples consist of a number of ethnicities which include mainly Samoan, Cook Islands, Tongan and Niuean. While each have their own distinctive language and cultural practices, all Pasifika ethnicities share common values and principles which must be considered when safeguarding Pasifika disabled people from abuse.¹³ These include but are not limited to:

Respecting Pasifika cultures - Pasifika people's connectedness and relationships to their family and communities is enabled and enhanced, and Pasifika people's world views, practices and protocols are respected. Pasifika families have a unique role in the life of a Pasifika disabled person. Their input and insights must be respected, valued and supported.

¹³ *Organisational Guidelines for Disability Support Services – Working with Pasifika People with disabilities and their Families*, Le Va, 2014

Working together - Pasifika people are better supported through a holistic approach which includes Pasifika disabled people, their families and communities working together with services to safeguard them from abuse.

Please also see the *Organisational Guidelines for Disability Support Services – Working with Pasifika People with disabilities and their Families* that has been developed by Le Va for further information.

11. THE MINISTRY AND SAFEGUARDING

11.1 Service specifications

The Ministry provides clear expectations via service specifications regarding the prevention and management of incidences of abuse. You should also refer to the Guidelines for contract relationship managers for further information regarding how your Contract Relationship Manager may engage with you in relation to any required developmental work.

The Tier 1 Service Specification which applies to all DSS Outcome Agreements includes the following section:

Prevention of Abuse and/or Neglect - The Ministry has zero tolerance of any form of abuse or neglect of People using its funded services.

- a. The Provider will safeguard people and their family/whanau, advocates, staff and visitors from abuse, including physical, mental, emotional, financial and sexual maltreatment or neglect when interacting with the Service. The Provider will have policies and procedures on preventing, detecting and eliminating abuse and/or neglect. These will clearly outline the responsibilities of all staff who suspect actual or potential abuse, including immediate action, reporting, monitoring and corrective action. These procedures will also include reference to the Complaints Procedure.
- b. The Provider will ensure that relevant employees are able to participate in family, inter-agency or court proceedings to address specific cases of abuse and neglect.

In addition all DSS funded providers have service specifications that require the prevention, management and risk reduction of abuse and support for People receiving support.

11.2 Reporting

Current Ministry contracts and service specifications detail when providers should notify the Ministry of an incident. For those providers who are certified, reporting obligations are specified in Section 31 of the Health and Disability Services (Safety) Act.

This does not preclude a provider raising any issue of concern with the Ministry. This should happen with your Contract Relationship Manager in the first instance.

When notifying the Ministry of complaints and/or incidents involving people we support it is expected that the provider will ensure:

- The immediate safety of the people involved, in particular the person at the centre of an alleged abuse and any other residents who may be at risk.
- That a written report has been completed to serve as a record of the event.
- That the Ministry is provided with incident forms, investigation reports and any necessary updates in a timely manner.

The Ministry reviews incidents received in order to identify any trends that may be occurring. Serious events may be investigated by the Ministry. If negative trends are identified it is likely that a conversation would take place with the provider and the Contract Relationship Manager to establish further clarity regarding the trend and to resolve issues. Trends may include things like increased numbers of injuries within service, complaints from people supported and / or their families / whānau.

11.3 Role of audits and evaluations

Providers are subject to routine evaluations and certification audits of their services. The evaluations of services focus on the quality of life of people using the services including service practices and their alignment with Providers contractual agreement. The certification audits focus on meeting the health and disability sector standards. Providers may also be subject to an issues based audit as part of their contractual agreement where concerns are raised in regard to the health and safety of residents. Providers of DSS funded services will be explicitly expected to demonstrate:

- The development and implementation of abuse prevention and management guidelines.
- That support staff have attended training that focused on abuse prevention.
- That through recruitment, induction and supervision practices they have attracted support staff with the required values and competencies.
- That they have rights protection systems throughout the organisation for people supported, i.e. consumer groups, regular access to advocacy services, rights based education for people supported.

12. THE ROLE OF LEGISLATION AND REGULATION

The Protection of Personal and Property Rights Act 1988, the Human Rights Act 1993 and the Health and Disability Commissioner Act 1994 specify protections that are specific to or inclusive of disabled people. Disabled people supported in services may also be subject to the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act (ID(CCR) Act). Both Acts provide a level of restriction to disabled people subject to these Acts. The Acts also give specific rights that are intended to protect individuals subject to these Acts and prevent exploitation and abuse.

Regulation is also provided by the New Zealand Health and Disability Standards which services are required to meet such as Consumer Rights¹⁴ and providing a safe and appropriate environment¹⁵. Community responsibilities regarding the prevention of abuse are also detailed in documents such as the United Nations Convention on the Rights of Persons with Disabilities, article 16 specifies the right to “Freedom from exploitation, violence and abuse” and requires steps to be taken in the interests of preventing exploitation and abuse.

The responsibilities of all community members in relation to disabled people are enshrined in law such as the Crimes Amendment Act (2011). The Crimes Amendment Act requires the reporting of harm to vulnerable adults. A vulnerable adult is defined as “a person unable, by reason of detention, age, sickness, mental impairment, or any other cause to withdraw himself or herself from the care or charge of another person.” The Domestic Violence Act (1989) provides coverage for individuals in a domestic relationship and does not include paid carers or support workers. This means that use of this Act does not provide protection for many people with disabilities.

Disabled people must be served by legislative frameworks and support systems that uphold their right to be free from violence and abuse. Safeguarding can be described as “supports and mechanisms that promote, enhance and protect an individual’s: human rights; decision making, choice and control; safety and wellbeing; citizenship and quality of life.”¹⁶ Safeguards provide both preventative and responsive measures in addressing abuse. People being supported should be empowered to determine safeguards for themselves as much as possible.

The Vulnerable Children Act 2014 was passed in June 2014 and has the intention of creating a better life for children in New Zealand. As providers in some instances you

¹⁴ Health and Disability New Zealand Standard NZS8134.1.1

¹⁵ Health and Disability New Zealand Standard NZS8134.1.4

¹⁶ *Disability Services Commission Position Paper Individual Safeguarding*, Government of Western Australia.

may have children residing in your services. As such you are required to work in a manner that fosters the well-being of children.

You will also be subject to the United Nations Convention on the Rights of the Child. This has particular relevance in relation to age mixing provisions which prohibit the mixing of children with adults unless it can be demonstrated that it is in the best interests of the child. Article 23 relates specifically to disabled children and states 'If you have a physical, mental or intellectual disability, you have the right to reach your full potential. You have the right to extra help with your education care and support if you need it.'

13. THE ROLE OF OTHER AGENCIES

13.1 The Police

The Police are responsible for protecting public safety and maintaining law and order in New Zealand. Respectively, they are given certain powers to carry out their duties such as investigating alleged crimes and prosecuting people for committing crimes. Situations of abuse may involve a perpetrator engaging in a criminal act. The police have a responsibility to ensure that a timely and appropriate investigation takes place in response to a crime.

13.2 Health and Disability Commissioner

In some cases incidents will be referred to the Health and Disability Commissioner. The abuse of disabled people constitutes a breach under the Health and Disability Code of Consumers Rights. The primary role of the Commissioner is to ensure that the rights of people receiving health and disability services are upheld.

When someone who accesses health and disability services has a complaint, advocates are available through the Nation-Wide Advocacy Service of the Health and Disability Commissioner, to provide free, independent and confidential support. The commissioner may also direct that an investigation in relation to the complaint if this is deemed appropriate. The Commissioner offers specialist advocates to support disabled people. They also have specialist Maori and Pasifika advocates available.

13.3 Office of the Ombudsman

The office of the Ombudsman is an independent resource to help the community deal with government agencies. It has a focus on fairness and impartiality and will undertake investigations where necessary. It also maintains a monitoring role in places of detention. Regional Intellectual Disability Supported Accommodation Services may be subject to monitoring in the provision of secure services to care recipients under the ID(CC&R) Act 2003.

13.4 District Inspectors

The ID(CC&R) Act provides additional safeguards for care recipients in respect of their rights as specified under the Act.¹⁷ District inspectors are lawyers appointed under the ID(CC&R) Act to safeguard the rights of people subject to a compulsory care order.

Inspectors perform distinct functions (set out in Part 7 of the IDCC&R Act). These functions are:

- Visitation and inspection of facilities in the locality for which they are responsible including monitoring and assisting with the provision of information and checking of documentation processes;
- Handling and resolution of complaints of breaches of care recipients' rights under the IDCC&R Act and referral of all breaches of rights covered under the Health and Disability Code of Consumers Rights (Code of Rights) and co-ordinating of information-sharing with the Health and Disability Commissioner and delegates;
- Conducting inquiries and investigations into any alleged non-Code breach of the Act or breach of duty by a director, employee, or agent of a service.

14. SUMMARY

Safeguarding for disabled people requires a whole of system approach that places disabled people at the centre. As DSS funded providers you have a significant contribution to make to safeguarding for the people you support. Understanding types and indicators of abuse will help you develop strategies for prevention. Taking a positive approach to safeguarding will enable your organisation to look at developing a culture of support that provides the very best outcome for the individual supported.

This guideline document is intended to have provided you with some strategies for ensuring that safeguarding occurs. You will also have your own strategies. The Ministry and your Contract Relationship Managers are available to discuss further any concerns or ideas you have as we all move towards a more responsive system that provides the supports to ensure that disabled people live the life they choose and one which maintains both a dignity of risk and individual safety.

¹⁷ Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, Part 5.

15. APPENDICES

15.1. Organisational Policy Template

15.2. Available resources in the community

DRAFT