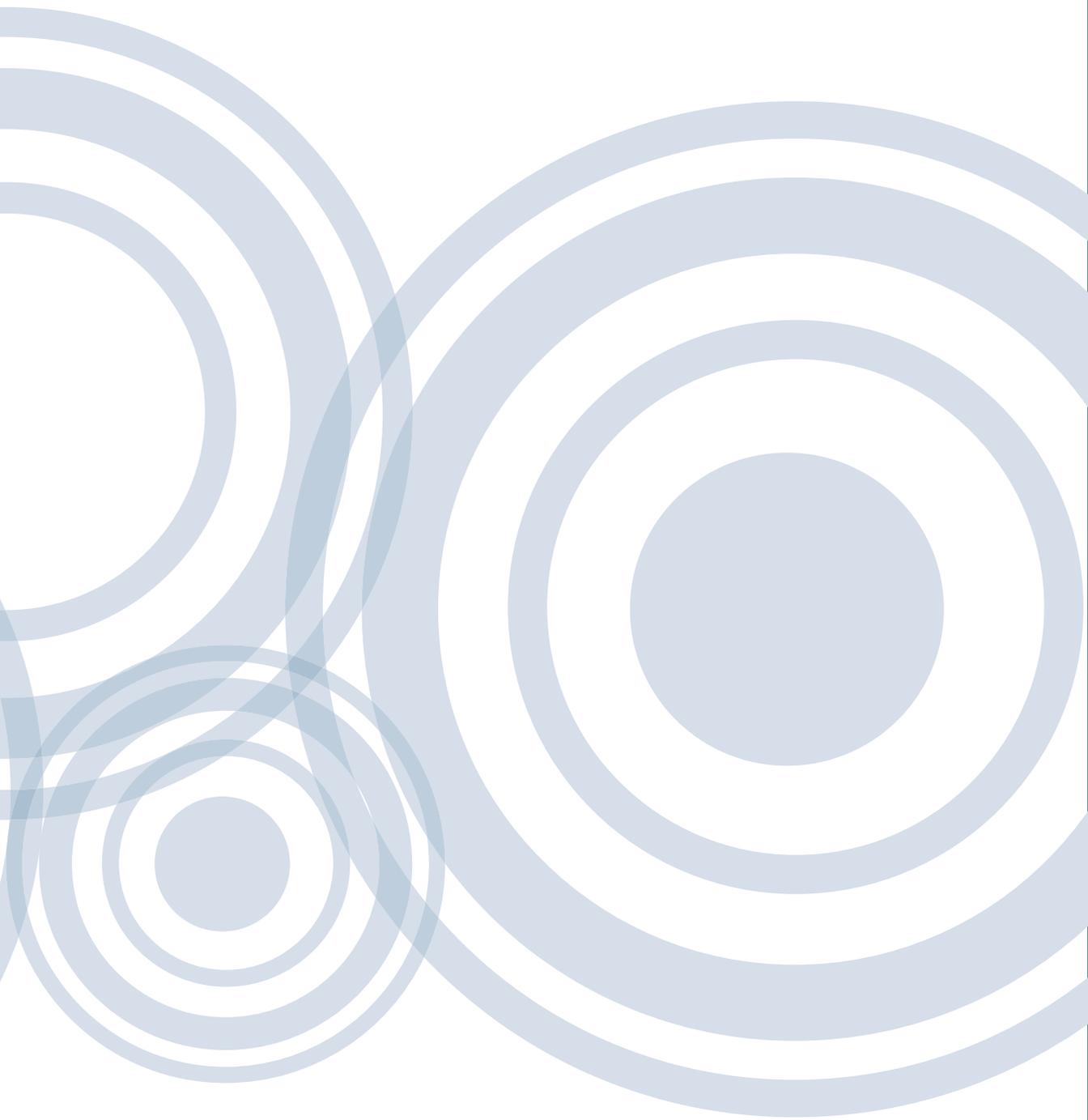


INTERAGENCY PROTOCOL FOR RESPONDING TO ABUSE OF OLDER PEOPLE

2007



New South Wales
Government



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OLDER PEOPLE HAVE THE RIGHT TO:

...BE TREATED WITH
DIGNITY AND RESPECT

...MAKE THEIR OWN
DECISIONS AND CHOICES

...LIVE IN A SAFE ENVIRONMENT

...ACCESS THE PROTECTIONS
AVAILABLE TO OTHER ADULTS IN
THE COMMUNITY

MINISTER'S FOREWORD

The number of people in NSW who are 65 or older is rapidly increasing. At the mid point of this century it is predicted that there will be over two million people in NSW over the age of 65, more than double the current number of older people in NSW today. It is important for the NSW Government to continue to develop policies that respond to the challenges and opportunities of population ageing.

The *NSW State Plan – A New Direction for NSW* presents a framework for NSW to maximise the important contribution that older people make to society. As the Minister for Ageing I am aware of the significant role older people have in families and communities across NSW. I am also aware that an issue of concern to older people, their families and service providers alike, is the possibility of older people experiencing abuse, particularly in their own homes. This abuse can at times be very subtle, such as door-to-door scams, or it can be in the form of serious criminal offences such as sexual assault. Nonetheless, most forms of abuse of older people are crimes under NSW law, and as such, it is imperative for the community to respond to these appropriately.

Through the *NSW State Plan*, the NSW Government outlines its commitment to crime reduction and increasing safety in the community. The *Interagency Protocol for Responding to Abuse of Older People* has been revised, building on previous work by the NSW Government. It aligns policies for responding to the abuse of older people with more recent work in areas such as domestic violence and sexual assault.

Informed by experts across the Government and non-government sectors, the *Interagency Protocol for Responding to Abuse of Older People* represents the commitment of key NSW Government agencies to respond to abuse of older people. The protocol sets expectations for NSW Government agencies and funded services regarding the need to be alert to the indicators of abuse of older people and for responses to be timely and at all times in the best interests of the older person who has been abused.

The *Interagency Protocol for Responding to Abuse of Older People* is an important document in formalising something that should be common sense to us all – older people deserve the same protection as any other member of our community.



The Honourable Kristina Keneally MP

Minister for Ageing

INTRODUCTION AND BACKGROUND

1.1

Interagency protocol for responding to abuse of older people – the NSW Government commitment

The NSW Government maintains a strong commitment to supporting the health and wellbeing of its older residents. Older people have the right to be treated with dignity and respect and to live in a safe environment.

Abuse of older people living in the community can occur in a variety of settings and may take various forms. It is a complex and serious problem that can include neglect, physical abuse, sexual abuse, psychological abuse and financial abuse. Abuse of older people is unacceptable and many forms of abuse are a crime.

The NSW Government first published an *Abuse of Older people: Interagency Protocol* and an associated *Legal Issues Manual* in 1995. This revised interagency protocol takes into account changes over the last decade in service delivery and practice, legislation and approaches to victims' rights. The revised interagency protocol continues to promote a coordinated response to the abuse of older people living in community settings. The protocol highlights the need to prioritise the safety and wellbeing of older people who are at risk or have experienced abuse and neglect and the role that service providers have in responding.

This interagency protocol is one of the strategies in place to ensure that NSW Government agencies, and partner agencies in the non-government sector, who are involved in supporting older people are able to respond appropriately to abuse of older people living in community settings. The protocol has been revised to assist workers, including volunteers, in a variety of roles across organisations that provide services to older people in NSW.

1.2

About the protocol

This revised interagency protocol combines the previous *Abuse of Older People: Interagency Protocol* and the associated *Legal Issues Manual* to provide a good practice framework for agencies and their staff in responding to the abuse of older people living in community settings.

The purpose of this interagency protocol is to:

- outline the NSW Government commitment to responding to abuse of older people living in community settings
- provide workers, including volunteers, and agencies working with older people with a clear understanding of the various roles that key NSW Government agencies play in the process of responding to abuse of older people in the community
- provide a practical framework that Government and non-government agencies working with older people can apply in their response to abuse of older people living in community settings
- provide information that agencies can use to inform development and or updating of agency policies and procedures to ensure a coordinated response to the abuse of older people

This interagency protocol has been developed to provide a practical framework for workers and supervisors or line managers who provide services to older people living in community settings, that is, older people who do not live in residential aged care facilities. It includes, for example, older people living primarily in their own private dwelling or that of a family member.

The Australian Government has protocols and requirements in relation to abuse of older people living in residential aged care or in services they fund. Information about these protocols and requirements can be sought from the Australian Government's Department of Health and Ageing and where required can be incorporated into agency policies and procedures.

In situations of abuse of older people within facilities such as hospitals or supported accommodation, it is recommended that responses be guided by individual agency policies and procedures in addition to this protocol.

This interagency protocol includes the following:

Section 1	provides background to the NSW approach
Section 2	defines abuse of older people
Section 3	outlines principles for responding to abuse of older people
Section 4	outlines key concepts in responding to abuse of older people
Section 5	details the role of key NSW Government agencies and the good practice framework for responding to abuse of older people living in community settings
Section 6	provides a list of useful contacts

1.2.1 Parameters of the protocol

In using this interagency protocol workers and agencies should:

- be acquainted with the relevant policies and procedures of their own agency or service, particularly those relating to vulnerable older people or crimes committed against clients
- use the protocol alongside and not separate from other measures to respond to violence and abuse of adults (e.g. Domestic violence interagency guidelines)
- understand that the response framework is generic and must be adapted to reflect regional partnerships and service systems
- note that the response framework assumes that agencies will always act in the best interest of an older person who has been abused
- note that, while the interagency protocol provides practical guidance for responding to abuse of older people, each circumstance will be different and workers and agencies need to exercise professional judgement in conjunction with the use of the protocol
- note that workers should be familiar with the protocol in its entirety

1.2.2 How the protocol was developed

This revised interagency protocol has been developed through a NSW Government Interagency Working Group that coordinated a period of research including the analysis of Australian and international literature and practice guidelines, in depth discussion with Government and non-government practitioners from NSW metropolitan, regional and remote locations, and consultation with key NSW Government agencies and authorities.

DEFINING ABUSE OF OLDER PEOPLE

2.1

About abuse of older people

While abuse is a term that can mean different things to different people, it is fundamentally a violation of an individual's human rights by another person or persons. Abuse can take many forms including, but not limited to, abuse of older people by a friend, relative, carer, paid or unpaid worker, partner abuse, abuse of parents by adult children and sexual abuse.

Abuse of older people is any behaviour that causes physical, psychological, financial or social harm to an older person. The abuse can occur within any relationship where there is an expectation of trust between the older person who has experienced abuse and the abuser. Abuse may involve a single act, repeated behaviour or a lack of appropriate action. It may occur when a vulnerable older person is persuaded to enter into a financial or sexual transaction to which he or she has not consented, or cannot consent. Many forms of abuse of older people are crimes.

In the abuse of older people the relationship between the abuser and the older person is usually one of trust and mutual dependency.

Some older people may be particularly vulnerable to risk of abuse because they may:

- need high levels of support and care from a family member
- be women who have suffered (often unreported) domestic violence for many years
- be isolated from their neighbours, family and/or community
- become confused about their property, belongings and/or surroundings
- be vulnerable to people who take advantage of them financially or sexually

- become physically or verbally violent/aggressive because of progressively worsening conditions such as dementia
- undergo personality and behaviour changes because of illnesses and conditions that worsen progressively
- be relatively powerless because of diminished ability to advocate effectively for themselves or to modify their environment

Research suggests that frail, vulnerable, isolated and dependent older people, particularly women in these circumstances, are at heightened risk of abuse. Several studies have noted that high percentages of abused older people live with the abuser and also have a physical or cognitive impairment.

2.2

Forms of abuse of older people

Some of the more common forms of abuse of older people are neglect, physical abuse, sexual abuse, psychological abuse and financial abuse. Indicators for these forms of abuse are detailed in the following section. It is important to note that different forms of abuse may coexist. It is also important to note that the presence of one or more indicators does not necessarily mean that abuse has occurred. In these circumstances workers should remain vigilant to indicators of abuse.

Many forms of abuse of older people also constitute domestic violence. Domestic violence is a range of abusive behaviours to gain and maintain control. Domestic violence can occur between family members (i.e. parents, spouses, children, partners), between people who are living or have lived in the same household or residential facility, without the need for the relationship to be intimate, and in relationships involving paid or unpaid care and dependency.

Domestic violence occurs across all cultural and socio-economic groups. For further information refer to the *NSW Domestic Violence Interagency Guidelines* – www.lawlink.nsw.gov.au/vaw

Neglect:

The failure of a carer or responsible person to provide the necessities of life to an older person. Necessities of life are usually considered to be adequate food, shelter, clothing, medical or dental care. Neglect may also involve the refusal to permit others to provide appropriate care for an older person.

Indicators of neglect may include: dehydration, poor skin integrity, malnutrition, inappropriate clothing, poor hygiene, unkempt appearance, under/over medication, unattended medical or dental needs, exposure to danger or lack of supervision, absence of required aids, an overly attentive carer in the company of others.

Physical abuse:

The infliction of physical pain or injury, or physical coercion. Physical abuse can also include physical acts such as hitting, slapping, punching, burning, tying an older person to a chair or bed, locking an older person in a room and overuse or misuse of medications.

Indicators of physical abuse may include: bruises on different areas of the body; lacerations particularly to mouth, lips, gums, eyes or ears; abrasions; scratches; burns inflicted by cigarettes, matches, iron, rope; immersion in hot water; sprains, dislocations and fractures; hair loss (perhaps from pulling); missing teeth; eye injuries; scalding through immersion; pressure sores through the use of physical restraint.

Sexual abuse:

A broad term used to describe a range of sexual acts where the victim's consent has not been obtained or where consent has been obtained through coercion.

Indicators of sexual abuse may include: trauma around genitals, rectum or mouth; injury to face, neck, chest, abdomen, thighs or buttocks; presence of sexually transmitted infections; human bite marks; anxiety around the perpetrator and other psychological symptoms.

Psychological abuse:

The infliction of mental stress involving actions and threats that cause fear of violence, isolation, deprivation and feelings of shame and powerlessness. For example, treating an older person as if they are a child, engaging in emotional blackmail or preventing access to services.

Indicators of psychological abuse may include: depression, demoralisation, feelings of helplessness, disrupted appetite or sleeping patterns, tearfulness, excessive fear, confusion, agitation, resignation, unexplained paranoia.

Financial abuse:

The illegal or improper use of an older person's property or finances. This includes misuse of a power of attorney, forcing an older person to change their will, taking control of a person's finances against their wishes, denying them access to their own money and door-to-door scams.

Indicators of financial abuse may include: unexplained or sudden inability to pay bills, significant withdrawals, drastic changes to wills, unexplained disappearance of possessions, lack of funds for food or clothing, disparity between living conditions and money, recent addition of a signature on a bank account.

PRINCIPLES FOR RESPONDING TO ABUSE OF OLDER PEOPLE

3.1

General principles

The NSW Government considers the abuse of older people to be unacceptable.

Older people have the right to:

- be treated with dignity and respect
- make their own decisions and choices
- live in a safe environment
- access the protections available to other adults in the community

Older people who are at risk of, or who have experienced abuse may require varying support depending on the nature of the abuse, their level of independence, their health status and their capacity to make informed decisions. The needs, wishes and feelings of the older person must be sought throughout the response process. In supporting the older person it is important to believe them and to avoid being judgemental.

3.2

Principles for intervention

The NSW Government has adopted the following principles to guide agency practice and partnerships in responding to the abuse of older people living in community settings.

- Older people who are at risk or have experienced abuse are to be:
 - provided with information about all relevant options available to them
 - encouraged and assisted to make their own decisions
 - respected and given the choice to refuse services if competent to make that decision

- Even when it has been determined or observed that an older person cannot make their own decisions, every effort must be made to ensure their views are taken into account.
- Responses to the abuse of older people will be in the interests of the older person at risk or who has been abused, and focussed on ensuring safety and ongoing protection from violence and abuse.
- Many forms of abuse of older people are crimes. Legal remedies and protections are available for older people who have experienced violence, sexual assault, physical assault, domestic violence, abuse, threats, fraud, neglect, stalking, intimidation and harassment.
- Responses to the abuse of older people will be consistent with the NSW *Charter of Victims Rights* (refer to the Appendix).
- Responses to the abuse of older people will, as far as possible, take account of the needs of the older person in relation to Aboriginality, culture, disability, language, religion, gender and sexuality.
- The needs of the older person at risk of or who has been abused and the abuser must be kept separate at all times. This is particularly important in situations where the abuser has been the victim's carer or has complex needs.
- When the safety of others is involved, confidentiality cannot be offered unconditionally. In situations where a report to NSW Police is required, the consent of the person involved is not necessary.
- Any person should be able to report abuse of older people without fear of retaliation or retribution and in a supportive environment.

3.3

Principles of interagency practice

Interagency practice aims to bring about a coordinated person-centred approach to responding to the abuse of older people and requires a shared:

- understanding of the aims of a response or intervention
- appreciation of and respect for the different roles and contributions of agencies
- commitment to partnership between agencies
- understanding of the context in which agencies work and acknowledgement of their respective constraints

The identification, assessment, protection and care of older people who have been abused is an interagency and multi-disciplinary responsibility. A prompt response to the abuse of older people is a priority for all agencies.

3.4

Principles for reporting abuse of older people to NSW Police

Many forms of abuse of older people are crimes and may require NSW Police intervention.

In situations requiring NSW Police intervention, it is preferable that the older person be consulted and provide consent for the report. However, when a significant risk to the safety of the older person or others is involved, confidentiality cannot be offered unconditionally. In situations where a report to NSW Police is required, the consent of the person involved is not necessary.

Workers and supervisors must report to NSW Police regardless of the victim's views where:

- serious injuries, such as broken bones, have been inflicted
- the perpetrator has access to a gun and is threatening to cause physical injury to any person
- the perpetrator is using or carrying a weapon (including guns, knives or any other weapon capable of injuring a person) in a manner likely to cause physical injury to any person or likely to cause a reasonable person to fear for their safety
- an immediate serious risk to individual/s or public safety exists
- workers are threatened

Workers may also provide information to NSW Police when they hold a genuine and realistic concern about harm to a person's safety. Where this action is taken, it is not considered a breach of confidentiality as workers act with lawful excuse.

In all circumstances, an older person who has experienced abuse has a right to report and be supported in reporting an offence to NSW Police. Any requests to report to NSW Police should be facilitated immediately. In all situations where workers are not required to notify NSW Police, the victim's right to pursue or not to pursue the crime with NSW Police and report the offence should be respected.

When a decision is taken to report an incident to NSW Police, supervisors or line managers should be informed. When there is doubt as to what action is appropriate, supervisors or line managers should be consulted.

4.0 KEY CONCEPTS IN RESPONDING TO ABUSE OF OLDER PEOPLE

The following concepts have been defined and clarified as they relate to this document.

4.1 Mental capacity and consent

It is important to consider issues of mental capacity and consent when responding to abuse where the older person may have some disability that impacts on their capacity to make informed decisions (e.g. neuro-degenerative conditions such as dementia). Capacity to make informed decisions is critical particularly in the context of financial abuse, sexual abuse and medical assessment or treatment. In all circumstances, the older person's consent should be documented appropriately in client records.

While it is important to ensure that the older person is safe and not in danger of immediate or further abuse, it is vital to consider their level of mental capacity and whether they are capable of giving consent. This may be in relation to:

- whether the older person consented to the activity that may be abuse
- whether the older person can consent to any further investigation or assessment
- certain decisions or actions being taken during the response process
- the recommendations of a case management plan being actioned

Mental capacity is the ability to understand an act, a decision or transaction and its consequences. A person has capacity to make an informed decision if she or he is able to understand the general nature and effect of a particular decision or action, can weigh up the consequences of different options and can communicate their decision.

A person's capacity to make a particular decision should only be doubted if there is a factual basis to doubt it. It should not be assumed that a person lacks capacity just because she or he is older or has a particular disability. Even if the person lacks capacity to make important life decisions, they still have the right to privacy.

In NSW there is a legal presumption that all adults have the capacity and the ability to make their own decisions until proved otherwise. The process of establishing mental capacity is difficult, requires clinical expertise and is intertwined with a range of legal issues. Workers should contact their supervisor if they are concerned or feel that a person's mental capacity should be assessed.

Issues of consent and capacity should be assessed and decided upon in consultation with other professionals e.g. medical practitioners, Aged Care Assessment Teams and the Guardianship Tribunal.

In instances where a person is incapable of making their own decisions, a guardian and/or a financial manager may be appointed. This appointment is a legal process and the power given to that person depends on the type of authority that has been given to a guardian or other substitute decision maker. For example, a guardian or enduring guardian can be authorised to deal with such matters as health and personal care, while an enduring power of attorney or financial management order provide the power to deal with financial matters. The validity of powers of attorney or enduring guardianship appointments can sometimes be questioned, generally on the grounds that the person did not have capacity at the time they were made. Establishing whether any of these appointments have been made and are valid is a legal process. It is recommended that workers do not get involved in issues relating to the status and/or validity of such documents, and that they refer the matter to their supervisor.

4.2

Undue influence and consent

Abuse due to undue influence may occur even where an older person is capable of understanding what is being done to them or on their behalf. Undue influence is a risk when a person is vulnerable or dependent upon another person, and may involve that other person threatening to withdraw essential support, or threatening to harm the person or another person.

Many instances of financial abuse contain elements of undue influence. In such situations, the older person may be influenced by a fear of the disapproval or anger of the person upon whom they have become dependent.

The older person may understand the implications of their compliance with the exploitative plans of the person they depend upon, but their fear overrides their understanding. In such instances, the best interests of the older person must be considered and appropriate action taken.

4.3

Privacy, confidentiality and sharing information

In responding to abuse of older people, it is important that workers are aware of and respect the right of older people to privacy.

Confidentiality refers to the obligation of workers not to disclose personal information they obtain about their clients unless they have the consent of the person concerned. However, there will be situations where confidentiality is lawfully overridden.

In circumstances where the situation may override an older person's right to confidentiality requirements, workers should always consult their supervisors. Some examples are:

- instances where there may be reasonable grounds to believe that a serious crime or offence has been, or may be, committed and a criminal investigation by NSW Police may be required
- where disclosure is in the person's interest (e.g. if the person is suicidal) or where the safety of others is at risk
- where there may be a duty to warn a third party who is in danger

In circumstances where the overriding of the requirement for confidentiality may be warranted, workers should consult their supervisors.

Every worker, regardless of their role, profession or discipline, must communicate and cooperate with others in responding to the abuse of older people. Sharing information lawfully between agencies is essential to the protection of vulnerable older people. This is achieved by:

- sharing information on a 'need to know' basis
- maintaining trust and respect for privacy between all parties involved
- advising the older person from the beginning what the limits and boundaries of confidentiality are
- as far as possible, letting the older person know what information about them is shared with other agencies

A record should be maintained of any information shared between agencies in responding to abuse of older people.

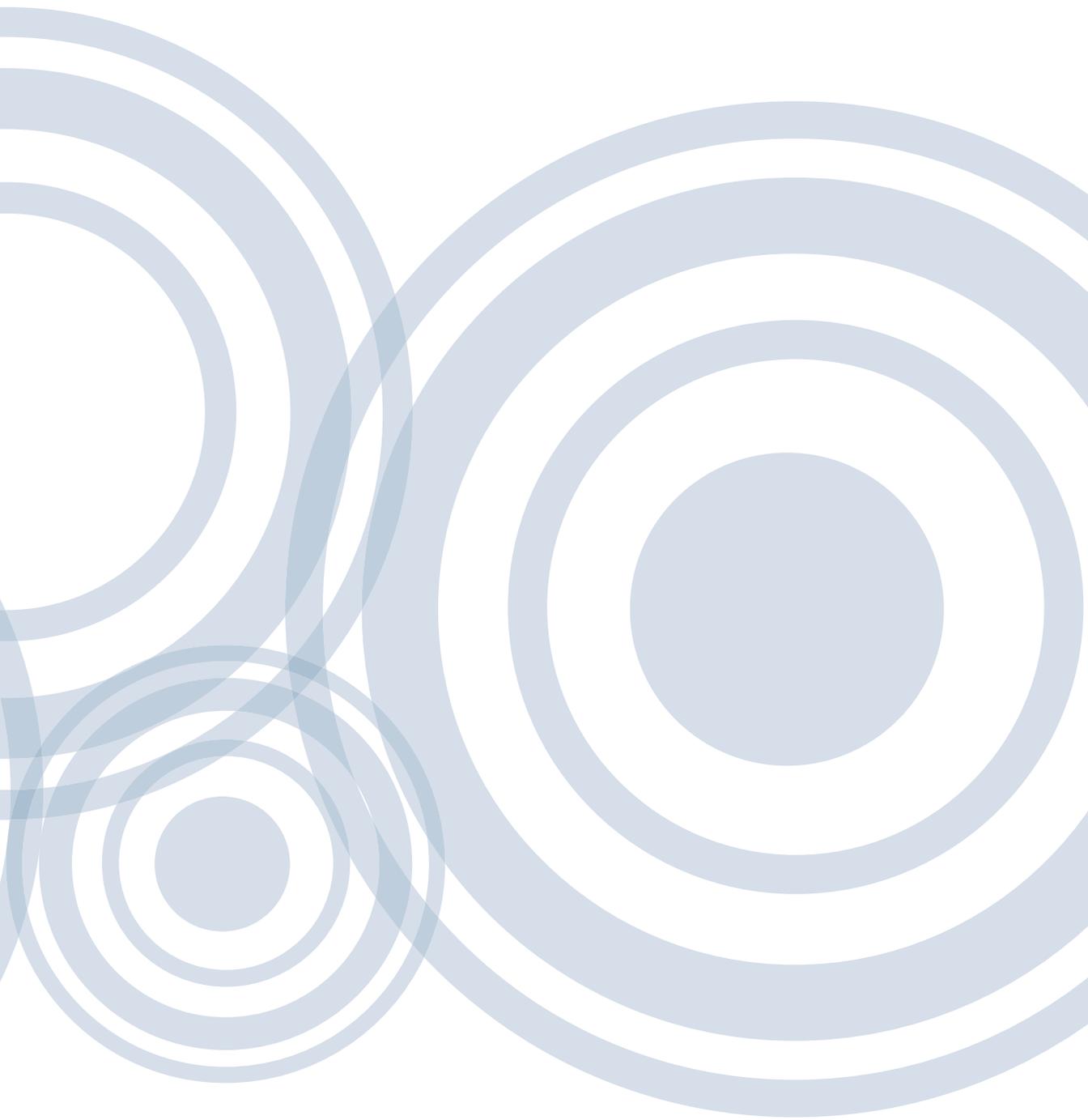
The promise of complete confidentiality cannot be given to any person who raises a concern about the abuse of an older person. This includes the vulnerable older person, a relative, a fellow worker or a member of the public. When information about abuse is provided to Police and other key NSW Government agencies, these agencies will act, even if consent has not been given, when:

- the vulnerable older person is believed to lack capacity to make an informed choice
- a criminal investigation by the Police may be required
- there is a wider public interest

There are provisions in place to protect workers who disclose information. For example, the *Health Records and Information Privacy Code of Practice 2005* is intended to permit, in certain limited circumstances, the collection, use and disclosure of health information by human services agencies without the consent of the person to whom the health information relates.

There are a number of legislative instruments and related publications that should be considered in determining when confidential information may be shared. These are:

- the NSW *Privacy and Personal Information Protection Act 1998* which outlines the principles that govern the collection, storage, access, use and disclosure of information
- the *Health Records and Information Privacy Act 2002*, which regulates personal information
- *Privacy and People with Decision-Making Disabilities* (Privacy NSW publication)



5.0 RESPONDING TO ABUSE OF OLDER PEOPLE

This section provides a good practice framework for responding to the abuse of older people in community settings. It provides a framework for workers and agencies who may be required to respond to abuse, as well as a framework to inform the development or updating of individual agency policies and procedures.

The NSW Government recognises that, while there are common features within a good practice framework to respond to the abuse of older people, neglect, physical abuse, psychological abuse, sexual abuse, financial abuse or domestic violence will require different and at times specialised responses. Workers and agencies are encouraged to seek advice from specialist services whenever required (e.g. Aged Care Assessment Teams, legal services, NSW Police, mental health services, sexual assault services).

All organisations that provide services to older people

All agencies that provide services to older people have the following roles in responding to the abuse of older people:

- identify possible abuse of older people
- refer suspected, disclosed or established cases of abuse to appropriate services or authorities
- assist in the provision of support and information as required
- be aware and sensitive to the need to provide language services and appropriate information for older people from culturally and linguistically diverse backgrounds

5.1

Roles of key NSW Government agencies in responding to abuse of older people

All workers employed in NSW Government agencies have a responsibility to respond to abuse of older people in our community. In addition, there are specific roles for agencies that provide specialist care or support for older people or respond to victims of crime. This section of the revised interagency protocol outlines the primary roles of agencies in responding to the abuse of older people.

The lead agency role will vary according to the nature of the abuse and the level of independence or health status of the older person who has experienced abuse. Not all agencies will need to be involved in every case of abuse of an older person.

The following NSW Government agencies have been identified as having a key role in responding to abuse of older people in NSW. All of these agencies share responsibility for recognising abuse of older people within their specific jurisdiction, developing agency-specific policies and protocols, and for maintaining appropriate records. Workers are advised to refer to their agency policies and protocols governing documentation and record keeping.

NSW Police

The primary roles of NSW Police in responding to abuse of older people are to:

- intervene in emergency situations where there is a risk of safety and/or harm to an older person
- respond to and investigate criminal offences
- provide information to the victim, and carer where appropriate

Lead role: emergency intervention and investigation of criminal offences

NSW Health

The primary roles of NSW Health agencies in responding to abuse of older people are to:

- assess the needs of the older person, and the person's carer if applicable, with a focus on immediate safety
- assist in the emergency and/or long-term treatment of the physical and/or psychological impact of the abuse on the older person and their carer, if applicable
- provide information to the older person who is at risk or who has experienced abuse, and carer when appropriate
- refer the older person to specialist services where required

In addition, the following specific roles for specialist health services have been identified:

Aged Care Assessment Teams and Aged Care Services

- conduct comprehensive assessments of vulnerable older people and their living conditions, including assessment of mental capacity when required and in consultation with the older person's General Practitioner or specialist geriatrician/psycho-geriatrician. This includes the care and support needs of the older person and the carer (when applicable) in the current situation
- provide advice to other agencies and referrals for older people who have been abused
- involve appropriate agencies in coordinating care and support for vulnerable older people who have been abused or are at risk of abuse
- act as 'expert witness' in instances where an application to the Guardianship Tribunal is needed to determine the client's need for a substitute decision maker
- provide information and support to other staff/clinicians involved

Lead role: comprehensive assessment and care coordination for vulnerable older people

Hospitals (acute care staff)

- assist in medical emergencies and/or ongoing treatment for the older person and their carer if applicable
- gather forensic evidence if required in cases of suspected physical or sexual assault
- provide appropriate referrals

Lead role: emergency and ongoing medical treatment

Sexual Assault Services

- provide crisis and ongoing counselling and advocacy services for older people who have experienced sexual abuse
- provide medical treatment to older people who have experienced sexual abuse
- gather forensic evidence
- provide counselling and support to non-offending family and/or carers
- provide appropriate referrals
- provide information and support to other staff/clinicians involved

Lead role: response to sexual abuse and care coordination

Mental Health Services

- assist in conducting assessments of the older person who is at risk or has experienced abuse and their living conditions, including assessment of mental capacity when required
- provide appropriate mental health care to the older person who is at risk or has experienced abuse and their carer as applicable
- make appropriate referrals
- provide information and support to other staff/clinicians involved

Lead role: mental health issues and case management

In addition to these key agencies, the Guardianship Tribunal is an independent, court-substitute body that can deal with applications for the appointment of substitute decision makers.

Guardianship Tribunal

The primary roles of the Guardianship Tribunal in responding to abuse of older people are to:

- hear and determine applications made to the Tribunal. These applications may relate to adults at risk of abuse, exploitation or neglect
- determine if adults with disabilities are capable of making major lifestyle and financial decisions for themselves
- when needed, appoint guardians or financial managers as substitute decision makers for adults with disabilities
- when needed, provide substitute consents for medical treatment and to review the appointments of enduring guardians and the appointment of an attorney under an enduring power of attorney
- provide advice to other agencies in relation to making applications to the Tribunal
- provide information to people involved in applications

Lead role: appointment of substitute decision makers and consenting to medical treatment for adults who lack capacity to make their own decisions

5.2

How workers respond when they recognise abuse of older people

When abuse of an older person is recognised, disclosed or suspected, the priority is to provide an appropriate, adequate and timely response. The focus should be on the immediate safety of the client, the carer if applicable, and the workers involved. The overall aim should be to ensure:

- the older person who has experienced abuse is supported and protected
- other vulnerable individuals and the public are protected
- the risk of further abuse is minimised
- the older person's life is disrupted as little as possible

Older people who have experienced abuse will require varying support depending on the nature of the abuse, their level of independence, their health status and their capacity to make informed decisions. The needs, wishes and feelings of the victim must be sought throughout the response process. In supporting the older person it is important to believe them and to avoid being judgemental.

If an employee or a service provider suspects an older person is being abused, the employing agency should take action in line with their relevant policies and procedures. If a crime is suspected there should be a coordinated approach to any investigation or intervention involving NSW Police and/or other relevant authorities.

5.2.1 Expectations of workers and coordinators

In many instances a front line worker will be the first to recognise or suspect abuse of an older person. The worker will be required to make an initial assessment of the urgency and risk of harm to the older person.

It is **not expected** that the worker will:

- solve the problem
- medically assess the older person and their living situation in any way
- decide whether the incident meets the threshold for laying criminal charges

It **is expected** that the worker will:

- follow their agency's policies and procedures
- contact NSW Police or an Ambulance if the matter is urgent
- refer suspected, disclosed, witnessed or alleged abuse to their supervisor
- discuss possible options with the older person
- keep a detailed confidential record of what happened

It **is expected** that the supervisor will:

- follow their agency's policies and procedures
- ensure NSW Police or the Ambulance Service have been contacted if the matter is urgent
- consult with specialist services if they are unsure what action is required

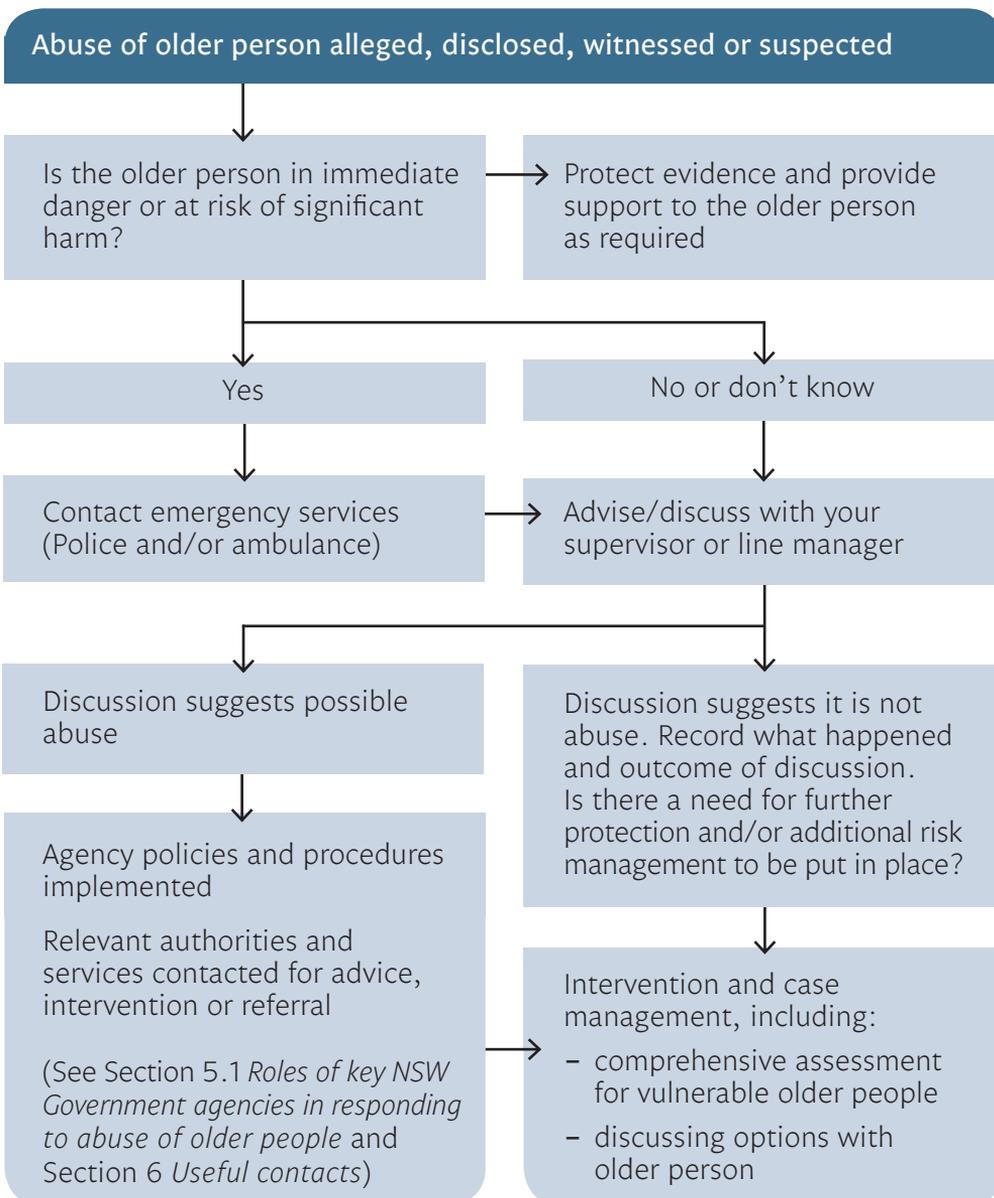
- refer the abuse of an older person to the appropriate authority, agency or service where further action or intervention is required to ensure the safety and wellbeing of the older person (see Section 5.1 *Roles of key NSW Government agencies in responding to abuse of older people* and Section 6 *Useful contacts*). Where possible, the supervisor should seek the consent of the older person to a referral
- discuss possible options with the older person and provide or organise support as required
- keep a detailed and secured confidential record of what happened in accordance with agency record keeping policies and procedures

The following response framework has been developed to guide the process of responding to abuse of older people.

When abuse is suspected, disclosed, witnessed or alleged:

- no one should alert or confront the alleged abuser (when and how this is done requires professional decision making between agencies on a case by case basis)
- everyone should take care of the safety of the older person, other vulnerable people, themselves and others
- NSW Police or other emergency services should be contacted when required
- evidence should be protected whenever possible
- workers should advise their line manager (supervisor or coordinator) without delay

Response framework



Note: workers should seek advice from a specialist service if they are concerned about an individual's capacity to consent.

This framework has been adapted from the *South East Wales Policy and Procedures for the Protection of Vulnerable Adults* (Wales, September 2003).

5.2.2 Assessing the situation and taking immediate action

Workers are required to refer all recognised or suspected abuse of older people to their supervisor or line manager.

The need for immediate action will determine the specific response required when abuse is recognised or suspected. The seriousness or extent of abuse is not always clear when it first comes to light.

It is important therefore when considering the appropriate action to establish the urgency and risk to the older person and determine whether immediate intervention is required.

The following factors need to be considered in assessing the level of urgency and risk:

- the vulnerability of the older person
- the danger to the older person or any other person
- the need for medical attention
- the nature and extent of the abuse
- the impact on the older person
- the risk of repeated or increasing abuse
- the risk of financial assets being lost irretrievably
- the relationship between the older person who has been abused and the abuser

Where it appears an older person is at immediate risk of harm or needs medical treatment, workers should call the police and/or ambulance (**Dial 000**) without referring to their manager if this would cause delay.

Any immediate action taken must be explained to the older person.

Where the older person is not at immediate risk of harm and a report to NSW Police is not required, an Aged Care Assessment Team or Aged Care Service can be contacted for advice, intervention or referral.

Other specialist services can also be contacted in specific circumstances, for example legal services, the Guardianship Tribunal, Sexual Assault Services and Mental Health Services.

Referrals and interventions must be consistent with the *Principles for Responding to the Abuse of Older People* outlined in Section 3 of this protocol, and with relevant agency policies and procedures.

5.2.3 Protecting evidence for NSW Police

In situations where NSW Police are contacted it is important to ensure that evidence is protected as much as practically possible to assist their investigation. In protecting evidence for NSW Police it is important to remember that the health and wellbeing of the older person who has experienced abuse is the priority. Medical attention should commence before the arrival of NSW Police when the need is urgent.

Workers at the scene must attempt to ensure that any evidence NSW Police may require to assist their investigation is not disturbed, such as:

- in situations of suspected sexual assault, bathing the victim should be delayed until NSW Police arrive if the older person who has been abused is not distressed by the delay
- if possible, the clothing of the older person who has been abused should not be washed as it may be used for evidence following an assault of any type
- if possible, the area where the incident occurred should be isolated and entry restricted until NSW Police arrive
- the older person who has been abused should not be questioned to reduce contamination of their recall and cause confusion about the event

5.2.4 Comprehensive assessment and case management/care coordination in responding to abuse of older people

In situations where the older person is considered to be potentially vulnerable a comprehensive assessment may be required. Comprehensive assessments of vulnerable older people are undertaken by specialist practitioners skilled at assessing the psychological, physical and emotional impacts of abuse of older people, i.e. Aged Care Assessment Teams and specialist aged care services and practitioners.

Interagency coordination is crucial to ensure the comprehensive assessment considers all the current and long-term needs of the older person, and strategies to prevent further abuse.

A comprehensive assessment should consider the following:

- harm minimisation plans to ensure the risk of further incidents of abuse are minimised. This may include ensuring the person has an appropriate attorney or guardian to act as a substitute decision maker, if and when required. Even when a person has capacity, this may mean partial management of finances by the attorney, for example, to prevent further abuse
- current living arrangements, need for services and strategies to ensure the victim's long-term wellbeing
- provision of support to the victim and/or their carer as required

A significant component of the comprehensive assessment is establishing mental capacity.

In addition to issues relating to mental capacity, comprehensive assessments will encompass:

- risk assessment of client and carer and any other people involved (e.g. family members)
- current living arrangements and desires of the victim
- mental and health status of the victim
- mental and health status of the primary carer

- any support that may be provided to the primary carer (e.g. support for coping with stress or an addiction such as gambling)
- the impact of the abuse on the older person (e.g. loss of primary carer)
- the likelihood of further victimisation
- alternative options for care and support in a community setting (e.g. identification of another family member)

In situations where the victim is assessed as having diminished mental capacity and personal and/or financial decisions are needed, it is expected that the assessment will also consider:

- the current arrangements for substitute decision making by someone with a power of attorney or enduring guardianship. Where arrangements are in place, contact should be made with the named attorney or guardian to discuss the need for them to act
- the need to refer the matter to the Guardianship Tribunal for consideration of the need
 - to appoint a guardian or financial manager
 - for consent to medical treatment
 - to review the appointment of an enduring guardian or enduring power of attorney, if that is not working in the best interests of the person who made the appointment
- the provision of supporting documentation to assist proceedings at the Guardianship Tribunal

Case management and care coordination for older people who have experienced abuse requires a commitment to interagency coordination. Joint planning and management are required for situations that involve older people with complex needs.

Careful, thorough and explicitly agreed joint work and planning must be established from the beginning. Particular care is needed to make explicit:

- which agencies are to be involved
- the roles and responsibilities of agencies and those of individual staff
- the coordinating and decision-making mechanisms that are required

In circumstances where financial or personal decision making issues are present, the agencies involved will often depend on whether or not the older person has appointed private attorneys/guardians or whether government agencies such as the Public Trustee, Office of the Protective Commissioner or Public Guardian are already involved (for information about the roles of these organisations see Section 6 *Useful contacts*).

5.2.5 Sources of advice or assistance

Supervisors – and in many instances front line staff – should be aware of the options available for seeking assistance in responding to abuse of older people. These options may include crisis help lines, sexual assault services, domestic violence, counselling services, social support and respite services, complaints mechanisms, information and advice services, and advocacy services.

Workers, agencies and older people themselves are encouraged to seek advice from specialist services where they are unsure about the options available to them, what action to take or where any other relevant information may be required to inform their response.

A list of specialist services that may be able to provide advice is included in Section 6 of this protocol. If a worker is not satisfied with the response and recommended action from their supervisor, workers are encouraged to seek further advice from one of the agencies listed in Section 6.

5.2.6 Legal interventions

Reflecting the principles of this protocol, older people who have experienced abuse should be provided with as much support and information as possible to assist their decision on how to proceed after an incident of abuse.

NSW Government agencies should be familiar with the range of options. Individual workers should seek support from their supervisors or coordinators if they are in doubt about who to contact.

Reporting crimes to NSW Police

NSW Police aim to reduce crime and violence and the fear of crime and violence. This aim cannot be achieved by the work of the Police alone. It requires the support of the community to report crime in a timely manner. Section 3.4 of this protocol outlines the principles for reporting abuse to NSW Police.

Reporting of crime can occur in a number of ways, including:

- by dialling 000 – used in emergency situations when urgent police assistance is required
- by attending or telephoning a Police station
- by ringing Crime Stoppers on 1800 333 000
- by ringing the Police Assistance Line on 131 444 – used for minor crimes that are not an emergency

NSW Police have a duty to investigate reports of crimes and suspected crime. The preservation of evidence greatly assists and expedites the investigation process. Evidence may include the scene of a crime, including the victim, objects/items or information records.

Apprehended Violence Orders

Apprehended Violence Orders (AVO) are orders made by the court to protect victims from violence and abuse and restrict the behaviour of offenders. There are two types of AVOs: Apprehended Domestic Violence Orders (ADVOs) in situations where the relationship of offender and victim is of a domestic nature, or Apprehended Personal Violence Orders (APVOs), where there is no domestic relationship between parties.

Either the victim or Police (on the victim's behalf) can make an application to a magistrate at a local court. The court will usually hear an application within a few weeks. A court can make an immediate interim order in urgent situations.

Further information can be obtained from Domestic Violence Liaison Officers who are located in each NSW Police Local Area Command, Legal Aid NSW (www.legalaid.nsw.gov.au) or the Domestic Violence Advocacy Service (www.dvas.org.au).

Guardianship Tribunal

The Guardianship Tribunal is an independent, statutory tribunal that acts like a court to determine if adults with disabilities are capable of making major lifestyle and financial decisions for themselves. The Tribunal is also able to provide substitute consents for medical treatment and to review the appointments of enduring guardians and the appointments of attorneys under an enduring power of attorney.

An application can be made to the Tribunal by anyone with a genuine interest in the welfare of the person who has a disability or is otherwise the subject of an application. Applications need to be supported by evidence to show that the Tribunal can make orders for the person concerned and that the situation cannot be resolved informally.

The Tribunal is not bound by the rules of evidence, but it must follow the rules of procedural fairness. This means that anyone who has a relevant interest that is likely to be affected by a decision of the Tribunal, must have an opportunity to know the evidence that may impact on them, and have an opportunity to respond to the evidence and present contrary evidence.

The Tribunal can speak to the person who is the subject of an application in private, but it has to relay the substance of what that person has said to the other parties participating in the hearing.

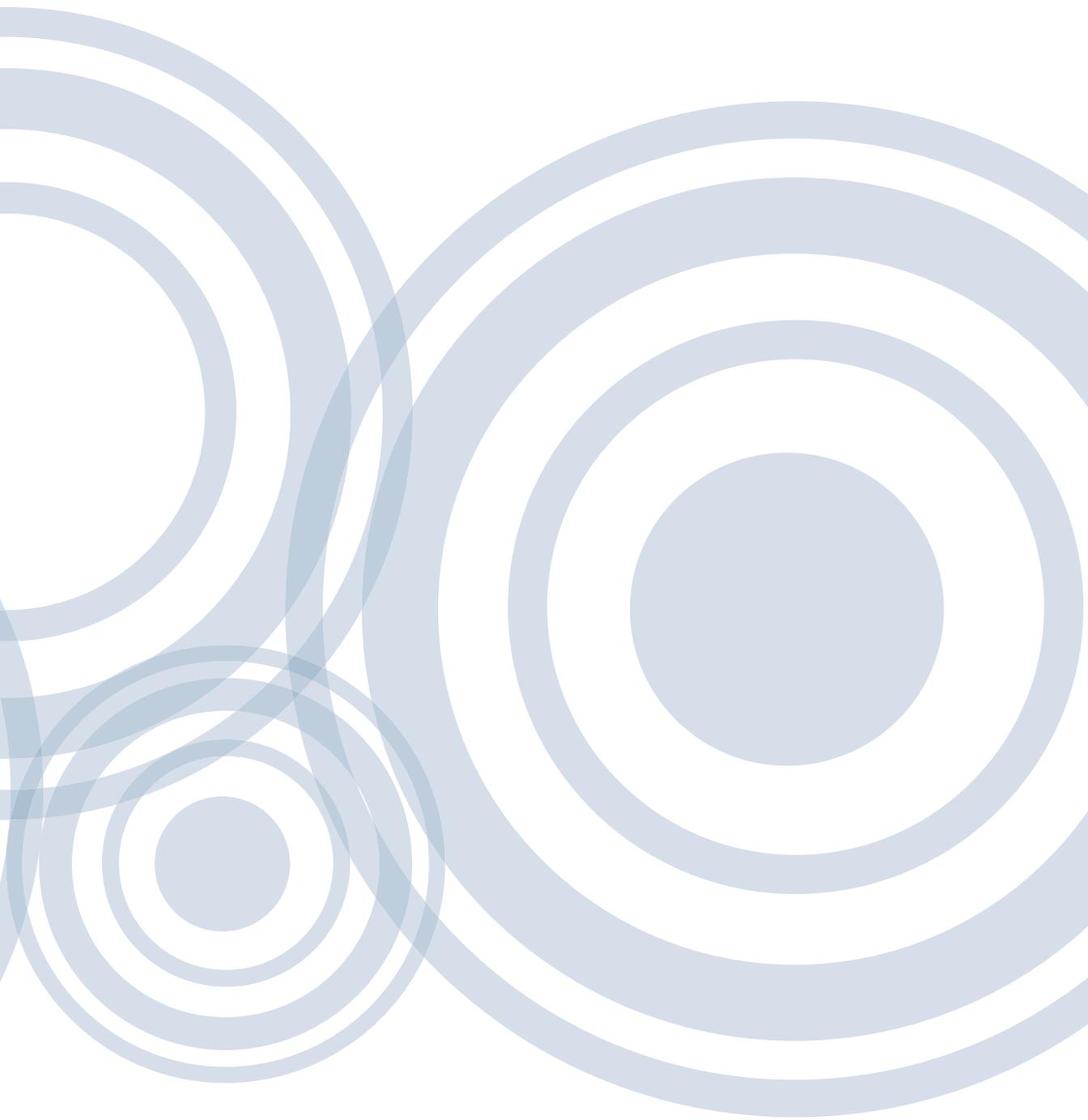
Service providers and others can ask to give their evidence confidentially, but the Tribunal cannot guarantee that such information will not become known to the other parties involved. If the Tribunal needs to rely on any information, that evidence will need to be explained to the person to whom it relates or who is likely to be affected by the information. Reports provided to the Tribunal may be distributed to the parties to a hearing.

When an application is made or a report provided to the Tribunal, the applicant or author should assume that the document will be provided to the person the application is about, and to any other parties to the proceedings. In special cases, the Tribunal can decline to identify the author of a document, but it still has to advise the parties of the substance of the evidence against them.

A party can seek leave to be legally represented at a Tribunal hearing, however, the Tribunal usually gives priority to the subject of the application being legally or separately represented.

The Tribunal has an enquiry service available from 9.00am–5.15pm weekdays, (02) 9555 8500 or 1800 463 928. In urgent situations, the Tribunal can be contacted after hours.

Information on other legal services and how to contact them can be found in the *Useful contacts* section of this document.



6.0 USEFUL CONTACTS

Local contacts

ServiceLink on the Human Services Network

Following is a list of contacts of statewide and specialist services that workers may find useful in responding to abuse of older people.

To assist in implementing the protocol at the local level, workers require access to information about local contacts as well as the following list of statewide services. Local contact details for human service agencies can be found in ServiceLink on the Human Services Network (HSNet) website.

The Human Services Network (HSNet) is a website for staff working in the NSW human services sector. HSNet is open to all agencies that provide human services in NSW. There are no special requirements and it is free to join. HSNet includes ServiceLink, a comprehensive online directory of human services in NSW to assist in putting people in touch with the services they need. Information about HSNet, including how agencies and staff can join, is available at www.hsnet.nsw.gov.au.

Agencies can also use the links in the following list of statewide and specialist services to obtain information about local specialist services and maintain their contact and referral information.

Statewide and specialist services

Translating and interpreting service

Phone: 131 450

This service is available 24 hours, 7 days.

NSW Police

In an emergency – Dial 000

Non-emergency – Contact the Police Assistance Line: 131 444

Legal advice and services

LawAccess NSW

Phone: 1300 888 529

Web: www.lawaccess.nsw.gov.au

Law Access NSW is a website and telephone service that can assist people in finding information and other services that will assist them with their legal needs.

LawAccess can:

- give legal information to assist with a legal problem
- arrange for one of our Legal Officers to provide legal advice over the phone
- refer to another legal or related service that is best able to help
- send you out information that can help with your legal problem

Community Legal Centres (CLC)

Phone: (02) 9212 7333

Web: www.naclc.org.au

CLC are independent organisations that provide free legal advice, information and referrals for individuals and communities in NSW, especially people on low incomes or otherwise disadvantaged in their access to justice.

Women's Legal Resource Centre (Indigenous Women's Legal Contact Line)

Phone: 1800 639 784

TTY: 1800 674 333

The Legal Resource Centre provides legal advice and support to Aboriginal and Torres Strait Islander women experiencing domestic or family violence.

Wirringa Baiya Aboriginal Women's Legal Centre

Phone: 1800 686 587

The Legal Centre provides legal advice and support to Aboriginal and Torres Strait Islander women.

Guardianship Tribunal

Phone: (02) 9555 8500 or 1800 463 928

The Tribunal has an enquiry service available 9.00am–5.15pm weekdays. In urgent situations the Tribunal can be contacted after hours.

Office of the Protective Commissioner

Phone: (02) 9265 3131

Outside Sydney: 1300 360 466

Web: www.lawlink.nsw.gov.au/opc

The Protective Commissioner provides financial management services for a person who is incapable of managing their own affairs due to disability. The Protective Commissioner also provides authorisation and direction for people who have been appointed to privately manage the financial affairs of individuals who are not able to manage their own affairs due to disability.

Office of the Public Guardian

Phone: (02) 9265 3184

Web: www.lawlink.nsw.gov.au/opg

The Office of the Public Guardian exists to promote the rights and interests of people with disabilities through the practice of guardianship, advocacy and education. The Guardianship Tribunal appoints the NSW Public Guardian as guardian of last resort. The Office is part of the NSW Attorney General's Department.

Public Trustee NSW

Phone: 1300 364 103

Web: www.pt.nsw.gov.au

The role of the Public Trustee is to act as an independent and impartial Executor, Administrator, Attorney and Trustee for the people of NSW. The Public Trustee can be appointed by the Court or Guardianship Tribunal as replacement attorney for an existing attorney by the Court/Tribunal. The Public Trustee should be contacted at one of their branches for further information on how they can assist in these circumstances.

Domestic violence

Domestic Violence Advocacy Service

Phone: (02) 8745 6999 or 1800 810 784

Web: www.dvas.org.au

The Domestic Violence Advocacy Service (DVAS) is a non-government organisation which offers a free and confidential legal service for women in NSW who are experiencing domestic violence. It is open Monday, Tuesday, Thursday and Friday 9.30am–12.30pm and 1.30pm–4.30pm.

Domestic Violence Line – Department of Community Services (DoCS)

Phone: 1800 656 463

This service provides telephone counselling, information and referrals to women's refuges, Women's Domestic Violence Court Assistance Programs, local services and legal services. Available 24 hours, 7 days.

Immigrant Women's Speakout

Phone: (02) 9635 8022

This service provides information and advocacy to women from non-English speaking backgrounds experiencing domestic violence. It also assists workers with information in relation to these issues.

Women's Information and Referral Service

Phone: 1800 817 227

TTY: 1800 673 304

This telephone service provides free, confidential information about Court Support Schemes, Family Support Services and other useful contacts.

Support for older people who have experienced abuse

Aged Care Assessment Teams

Commonwealth Carelink Centre on 1800 052 222 for contact details for your local ACAT, or the **Aged Care Information Line on 1800 500 853**.

Victims Support Line (VSL)

Phone: (02) 9374 3000 or 1800 633 063

The VSL provides information and referral (24 hours, 7 days) to a range of services for victims of any crime, such as:

- confidential emotional support, in addition to practical information on how to access the Approved Counselling Scheme, or how to access other groups and services that may assist with a victim's recovery following a crime

- information on the rights of a victim of crime as detailed in the Charter of Victims Rights
- information to victims of violent crime about applying for compensation through the Victims Compensation Tribunal

Victims of Crime Approved Counselling Scheme

Phone: (02) 9374 3000 or 1800 633 063

TTY: (02) 9374 3175

The Approved Counselling Scheme provides free face-to-face counselling to victims of violent crimes that have occurred in NSW. The counsellors with the Scheme are social workers, psychologists or psychiatrists who have proven experience of working with victims of crime. Counsellors are available in most rural and regional areas in NSW.

Sexual Assault Service (NSW Health)

There are a number of Sexual Assault Services across NSW. Most of these can be contacted 24 hours a day or via local hospitals after hours. Contact details of these can be found on the NSW Health Services Directory at the following web address:

www.health.nsw.gov.au/services

The Sexual Assault Service provides a range of services that can include immediate care and counselling for victims of sexual assault. The Service can advise staff about monitoring, documentation and duty of care issues in relation to any allegation of sexual assault.

NSW Victims Compensation Tribunal

Phone: (02) 9374 3111 or 1800 069 054

This service provides compensation and counselling to victims of crime.

Carers NSW

Phone: (02) 9280 4744

Email: contact@carersnsw.asn.au

Web: www.carersnsw.asn.au

Carers NSW can provide support for carers.

TARS: The Aged-care Rights Service Inc, NSW Advocacy Service

Phone: (02) 9281 3600 or 1800 424 079

Web: www.tars.com.au

The Aged-care Rights Service (TARS) is a community legal centre that provides advocacy for the residents of Commonwealth funded hostels and nursing homes, self-care retirement villages and recipients of in-home aged care in NSW.

Mensline Australia

Phone: 1300 78 99 78

Web: www.menslineaus.org.au

This national service provides information, support and referral for men who want to talk about their family and relationship concerns. This service is open 24 hours a day and can be called from anywhere in Australia for the cost of a local call.

Other useful web and intranet addresses

Websites

NSW Health Department

www.health.nsw.gov.au

Education Centre Against Violence (ECAV)

ECAV is a statewide, specialist organisation committed to producing training and resources for NSW Health and interagency professionals in working with children and adults who have experienced sexual assault, domestic violence, and/or physical and emotional abuse and neglect. For more courses in domestic violence, sexual assault and child protection you can visit the website:

www.ecav.health.nsw.gov.au

Australian Domestic and Family Violence Clearinghouse

www.austdvclearinghouse.unsw.edu.au

NSW Attorney General's Department

www.lawlink.nsw.gov.au

NSW Victims Crime Bureau

www.lawlink.nsw.gov.au/vs

Intranet sites

NSW Health Intranet – Domestic violence

This site provides information and resources in relation to NSW Health policies and staff development and training on domestic violence.

This site also provides resources in different languages:

<http://internal.health.nsw.gov.au/policy/hsp/domesticviolence>

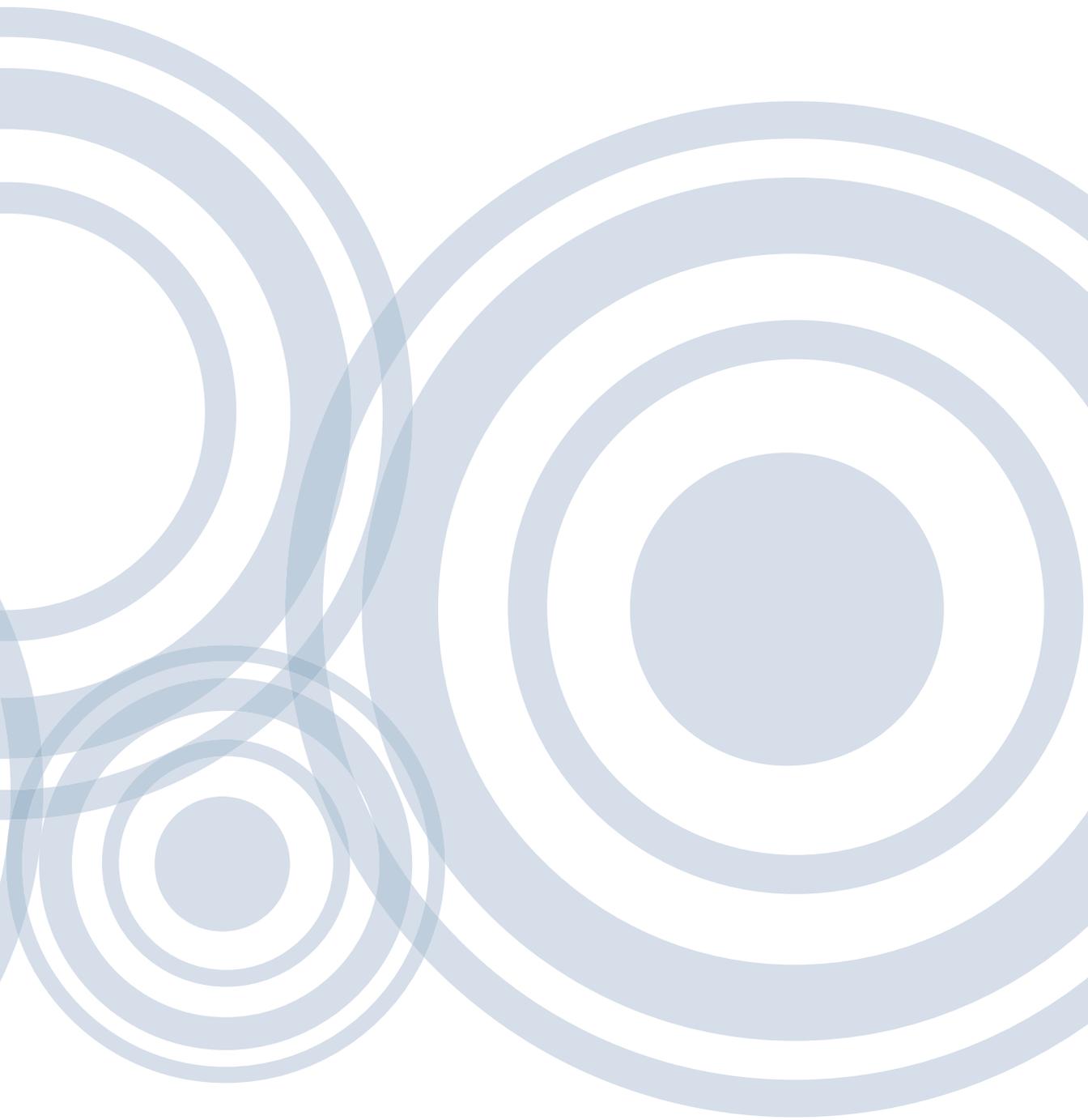
APPENDIX: CHARTER OF VICTIMS RIGHTS

The Charter requires NSW Government agencies to ensure that a victim has rights to:

- respect and compassion
- information about and access to welfare, health, counselling and legal services
- protection, privacy and safety
- information about investigation and prosecution of the crime
- help with preparing victim impact statements
- make submissions about offenders in custody
- information about compensation

The full Charter of Victims Rights can be accessed on:

www.lawlink.nsw.gov.au/vs



Interagency Protocol for Responding to Abuse of Older People is available from the NSW Department of Ageing, Disability and Home Care.

Level 5, 83 Clarence Street
Sydney NSW 2000

Phone: (02) 8270 2000

TTY: (02) 8270 2167

Email: info@dadhc.nsw.gov.au

www.dadhc.nsw.gov.au

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