

Policy: Recognising and responding to allegations of violence, abuse, neglect and exploitation of customers

Purpose

The purpose of this policy is to:

- recognise that all people have a fundamental right to live a life free of violence, abuse, neglect or exploitation and that all staff have an obligation to report/refer allegations of violence, abuse, neglect or exploitation.
- set out NSW Trustee & Guardian's (NSWTG) framework for responding to allegations of violence, abuse, neglect or exploitation of a customer, including escalation and referral pathways, and
- provide guidance on the types of abuse and associated indicators. Where NSWTG is appointed as financial manager or in estates, trusts or attorney matters, NSWTG does not investigate or confirm allegations of abuse (excluding where the allegation relates to the misuse of customer funds). Where NSWTG is appointed as Public Guardian, concerns/allegations of abuse are looked into and weighed up against the risk/benefits of a decision for the represented person.

Policy statement

Abuse can take many forms, such as physical, psychological/emotional, sexual, neglect and/or financial and can include multiple forms of abuse at the same time. Appropriate safeguards need to be put in place to help protect vulnerable persons from abuse.

The guiding principles for the response framework for abuse is set out below.

Duty of Care

NSWTG has a duty of care to protect customers from neglect, abuse and exploitation pursuant to section 39 of the NSW Trustee and Guardian Act 2009, section 4 of the Guardianship Act 1987. In addition, the customers' views and their wider welfare and interests need to be considered when dealing with allegations. Staff should take care not to give advice beyond their competence, delegation and authority.

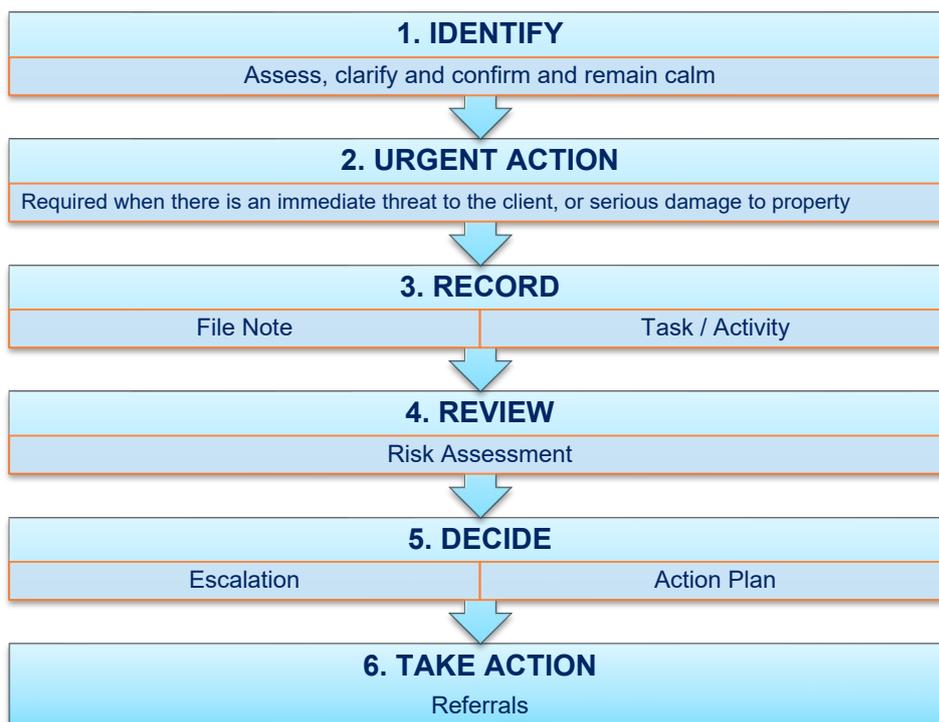
Response framework

Where NSWTG receives information relating to allegations of violence, abuse, neglect or exploitation of a customer, the organisation has a responsibility to respond appropriately and quickly to ensure the safety of the person.

This framework also applies where a staff member suspects violence, abuse, neglect or exploitation through interactions with the customer or other stakeholders.

In all instances of allegations of violence, abuse, neglect or exploitation, the staff member will immediately escalate the concerns to their Manager and perform a risk assessment. Where there is an immediate risk to the welfare and safety of the customer, including where criminal activity such as fraud or theft is suspected or reported, the Manager will report the concerns to emergency services (e.g. police).

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NSWTG recognises that its role is not to investigate allegations of abuse however will ensure reasonable steps have been taken to address the person's immediate needs and that their well-being is maintained as far as possible.

NSWTG will investigate matters relating to the misuse of customers' funds. This may occur as NSWTC's role as financial manager or in estates, trusts or attorney matters.

NSWTG does not have the authority to investigate allegations relating to the use or misuse of NDIS funding. Where NSWTC staff believe that a customer's NDIS funding may be misappropriated, a referral can be made to the NDIS Quality & Safeguards Commission or NDIS Scheme Integrity Branch.

Confidentiality and privacy

All staff must maintain customer privacy and confidentiality when dealing with an allegation of abuse in accordance with the [Privacy and Personal Information Protection Act 1998](#), and NSWTC's [Privacy Policy](#) and [Access to Information, Privacy and Confidentiality Policy & Procedures](#).

Support for staff

NSWTG is committed to ensuring the welfare of staff and recognises that responding to allegations of abuse can be distressing. Staff will be encouraged to access the Employee Assistance Provider, Benestar, for support services and counselling.

Code of Ethical Conduct

All employees are required to comply with the [Code of Ethical Conduct](#) and relevant Department of Communities and Justice human resources policies as per the [Corporate Policy Directive](#).

Types of abuse, neglect and exploitation

There are many types of abuse covering a range of behaviours which may be interconnected or complex in nature. This abuse may allegedly be perpetrated by a family member, friend, support worker or other person involved in the customer's life.

The definitions and indicators of abuse have been adapted from the [Preventing and responding to the abuse of older people \(Elder Abuse\) NSW Interagency Policy 2020](#), although abuse, neglect and exploitation can occur at any age.

Physical abuse

Physical abuse is intentionally inflicting physical pain, injury or physical coercion.

Examples of physical abuse include hitting, burning, restraining (e.g. tying to a chair or bed), locking the person in a room and the overuse, underuse or misuse of prescription medications.

Signs of physical abuse include:

- Injuries, bruises, burns or abrasions
- Pressure sores from the use of restraints
- Hypothermia or dehydration
- Unusual level of confusion or disorientation as a result of the misuse of medication.

Sexual abuse

Sexual abuse includes unwanted sexual acts including sexual contact, rape, language or exploitative behaviours where the person's consent has not been obtained, where consent has not been given due to coercion, or where consent is not possible due to cognitive incapacity.

Behaviours that are sexually abusive include non-consensual sexual contact, inappropriate touching or sexual harassment.

Signs of sexual abuse include:

- Trauma to the genitals, face, abdomen, thighs or buttocks
- Presence of sexually transmitted diseases
- Changes in sleep patterns, sleep disturbances or nightmares.

Financial abuse

Financial abuse is the illegal or improper use or management of a person's funds, property or other resources.

Examples of financial abuse include threatening, coercing or forcing a person to hand over an asset; abusing or neglecting power of attorney or financial management orders or using banking or financial documents without authorisation.

Signs of financial abuse include:

- Unexplained or sudden inability to pay bills
- Significant bank withdrawal
- Significant changes to a will or power of attorney
- Transfer of property to the alleged perpetrator.

Neglect

Neglect is the failure of a responsible person to provide the necessities of life, such as adequate food, shelter, clothing or medical care, to another person. This may also include preventing others from providing this care. Neglect can be intentional or passive.

Signs of neglect include:

- Inadequate nutrition, malnourishment or unexplained weight loss
- Poor personal hygiene
- Being left alone or unattended for periods of time
- Lacking in social, cultural, intellectual or physical stimulation.

Psychological/emotional abuse

Psychological or emotional abuse is the infliction of mental stress involving actions and threats that cause isolation, fear of violence, deprivation and feelings of shame and powerlessness, as well as restricting or stopping social contact with others.

Examples of this behaviour include name calling and degrading comments, threats of harm to the person or others, monitoring communication and preventing the person from contacting family, friends or accessing services.

Signs of psychological abuse include:

- Changes in self-esteem including shame
- Feelings of helplessness, depression or tearfulness
- Loss of interaction with others or withdrawal from services.

Exploitation

Exploitation is when a person takes advantage of someone else. This could include improper use of another person or the improper use of or withholding of another person's assets, labour, employment or resources, including taking physical, sexual, financial or economic advantage.¹

Elder abuse

Elder abuse can be defined as "a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person". Elder abuse can take various forms such as financial, physical, psychological and sexual. It can also be the result of intentional or unintentional neglect.² Older people are more vulnerable to abuse which often happens in an environment with complex power dynamics and is frequently underreported. Those experiencing abuse may not recognise it as such or may be concerned about repercussions of reporting especially if they are dependent on the perpetrator.

Legislative context

[NSW Trustee and Guardian Act 2009 \(NSW\)](#)

[Guardianship Act 1987 \(NSW\)](#)

[Aged Care Quality and Safety Commission Act 2018 \(Cth\)](#)

[National Disability Insurance Scheme Act 2013 \(Cth\)](#)

[Aging and Disability Commissioner Act 2019 \(NSW\)](#)

¹ Definition adapted from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, available at: <https://disability.royalcommission.gov.au/about-royal-commission/key-terms>

² Definition adapted from "what is elder abuse", World Health Organisation, available at: https://www.who.int/ageing/projects/elder_abuse/en/

Definitions

Customer means a managed person identified within the [NSW Trustee and Guardian Act 2009](#) whose financial affairs are managed by NSW Trustee, a person who is the beneficiary of a trust managed by the NSW Trustee, a person who has appointed the NSW Trustee as Power of Attorney or a person represented by the Public Guardian for health and lifestyle decision in accordance with the Guardianship Act 1987.

Guardian means a person appointed to make legally valid decisions on behalf of a person with disability who is unable to make decisions on their own or without supporting regards to their health and lifestyle. A guardian can be appointed by the Guardianship Division of the NSW Civil and Administrative Tribunal, Mental Health Review Tribunal or the NSW Supreme Court (this can be a private guardian or the Public Guardian). A guardian can also be appointed through a legal process known as Enduring Guardianship.

Financial manager means a person appointed to make legally valid decisions on behalf of a person with disability who is unable to make decisions on their own or without supporting regards to their financial matters. A financial manager can be appointed by the NSW Civil and Administrative Tribunal, Mental Health Review Tribunal or the NSW Supreme Court (this can be a private financial manager or NSW TG).

Attorney means when NSW TG is appointed by the person to act as their Power of Attorney to make financial decisions on their behalf.

Document information

Title:	Policy: Recognising and responding to allegations of violence, abuse, neglect and exploitation of customers
Owner:	Director, Customer Experience
Approver:	A/Chief Executive Officer
Date of Effect:	30 July 2021