

Bethany Care Ltd

Human Rights / Abuse & Neglect Reporting

Policy & Procedure 29

“Upholding the legal and human rights of each person with a disability and taking action to prevent and/or respond to allegations of abuse and neglect”

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1. Object & Field of Application

- 1.1 This document details the process adopted by Bethany Care Ltd (BCL) in recognition of the need to uphold legal and human rights and ensure freedom from abuse and neglect.
- 1.2 Bethany Care Ltd operates on the principle that people with disabilities have the same human rights as other members of society and should be empowered to exercise their rights (Disability Services Act 2006).

2. References

- a) Disability Services Act 2006
- b) National Disability Abuse & Neglect Hotline (the Hotline)

3. Legislation

- Disability Services Act 2006
- Human Rights and Equal Opportunity Commission Act 1986 (Cth)
- Anti-Discrimination Act 1991 (Qld)
- Disability Discrimination Act 1992 (Cth)
- Powers of Attorney Act 1998
- Guardianship and Administration Act 2000
- Child Protection Act 1999
- Industrial Relations Act 1999
- Work Health and Safety Act 2011 - sets out the laws about workplace health and safety for all workplaces, work activities in Queensland. The Act aims to make sure that employee's health and safety is not put at risk because of association with workplaces or work activities.
- Coroners Act 2003, Coroners Regulation 2003

4. Policy Statement

- 4.1 Bethany Care Ltd operates on the principle that people with disabilities have the same human rights as other members of society and should be empowered to exercise their rights.
- 4.2 People with an intellectual disability, who are clients of Bethany Care Ltd, have rights both as citizens of Queensland and as service users.
- 4.3 Bethany acknowledges and encourages the use of client advocates and representatives in the Human Rights process. We encourage clients to involve family members, advocates or representatives of their choice for assistance and support. Bethany is happy to assist with contacting representatives for the client. If required, Bethany will liaise directly with a chosen representative about any human rights issues or concerns. If more formal advocacy support is sought, a specialised agency may be able to assist e.g. Queensland Aged and Disability advocacy (www.qada.org.au)
- 4.4 Yet without effective personal assistance, many clients will lack the means to exercise their rights. Assisting clients to realise their rights is a complex and challenging task. Bethany staff must balance their responsibilities to a person and available resources against the person's rights and freedoms. Client's rights are the primary consideration.
- 4.5 Commitment to upholding the rights of people with an intellectual disability shows respect for people as equals. It also assists the maximum development of the potential of clients.
- 4.6 The rights of people with disabilities are clearly stated in the Disability Services Act 2006 (Note that it is not the responsibility of BCL to provide the full range of services, which allow these rights to be realised. Other agencies and people's informal supports have an important role.) The rights specified in the Act are discussed below.
- 4.7 Bethany Care believes that all reportable incidents must be reported, recorded and actioned immediately.

5. Staff Responsibilities Responding to Client Injuries or Suspected Abuse or Neglect

5.1. Personal Carers (PC)

- Remove from immediate danger
- Provide comfort
- Administer or arrange basic first aid
- Assess the seriousness of the injury
- Get help (for example, ambulance, police, neighbour, passer-by, Assistant Manager)

5.2. Assistant Manager (AM)

- To look after all the people involved.
- Assess the injury or situation as soon as possible
- Take any measures required to deal with the immediate action
- If necessary obtain a medical opinion (e.g. regrading bruising or possible sexual interference)
- If necessary safeguard the client from further harm
- Advise and consult with the Service Manager
- Ensure that all staff the injured client have made proper records (RIF forms)
- If appropriate, arrange for quality photographs of the injury
- If necessary, engage the services of specialist agencies, e.g. rape crisis centres, Protective Service, the police
- Continue initial inquiries into the circumstances of the injury.

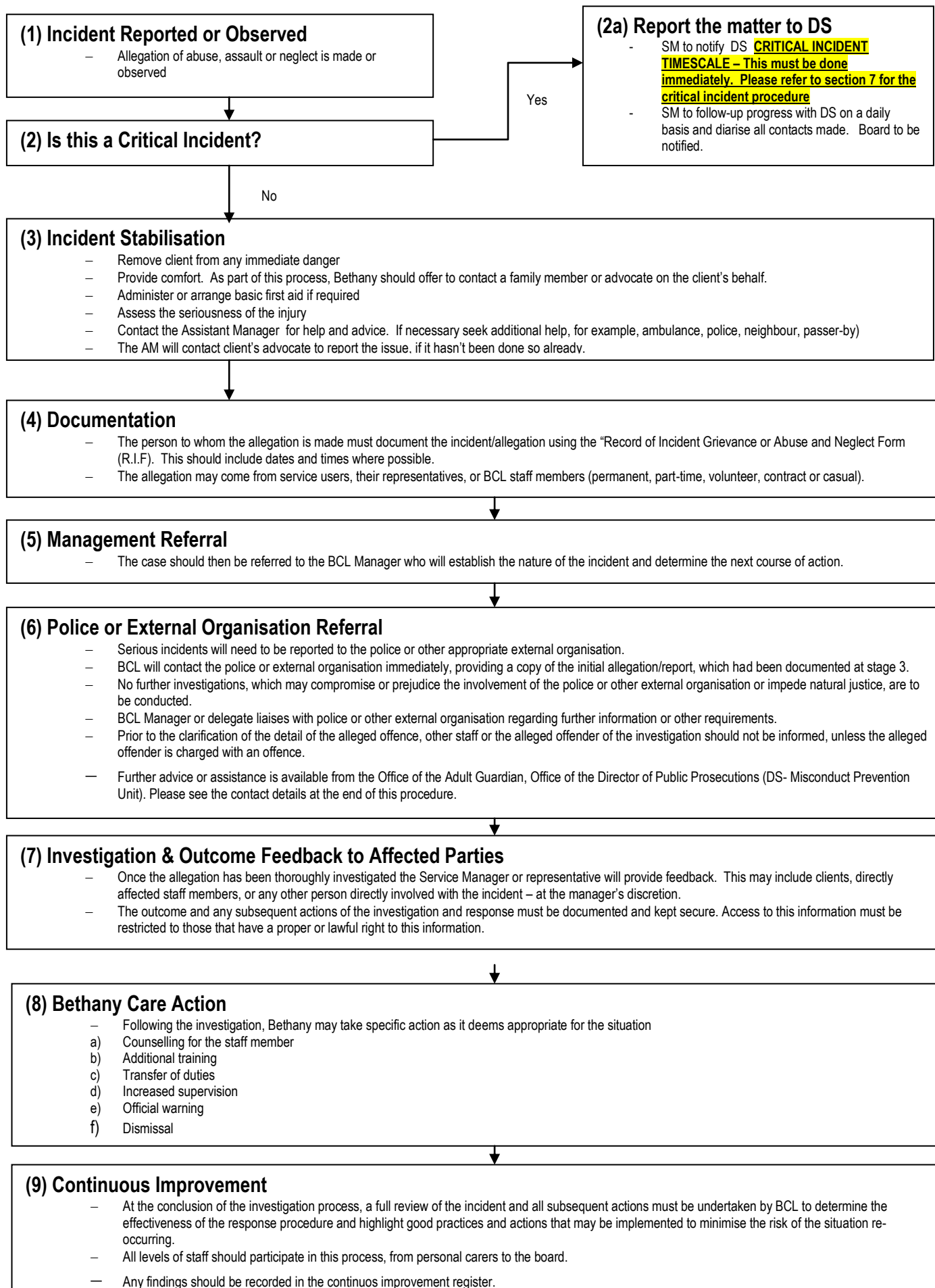
5.3. Service Manager (SM)

- Ensure that details from the Incident Report (RIF form) are entered in the client injury register
- Provide advice to the Assistant Manager
- Depending on the nature, extent and possible cause of the injury, discuss the injury with the Board of Directors representative
- If the injury resulted in hospitalisation, notify the Division of Workplace Health and Safety within 24 hours using the appropriate form <http://www.whs.qld.gov.au/icis/IncidentForm.jsp>. Written notification is required within 24 hours of an incident. If the incident involves a death, immediate notification is required on 1300 369 915. A Workplace Health and Safety Queensland Inspector is on call 24 hours.
- Failure to report injuries and other signs, which could be a result of misconduct or negligence, constitutes a breach of the Public Sector Act 1994.
- Ensure the Board of Directors have been informed
- The manager must ensure that appropriate records have been made and are up to date. This is important in the event of subsequent legal action for compensation. For example, medical case notes, records of significant actions taken by all persons involved.
- Monitoring a client's recovery from serious injury.
- Arrange specialist services in the case of sexual abuse.

5.4. Board of Directors (BOD)

- Depending on the nature, extent and possible cause of the injury, the Board of Directors may need to discuss the incident with the Service Manager.
- Ensure the client's parents / guardians or advocate are contacted, using the Service Manager where appropriate

6. Responding to Client Injuries or Suspected Abuse or Neglect



7. Critical Incident Reporting

- If it is a critical incident, the matter must be reported by the SM to Disability Services immediately.
- In general terms, a critical incident is defined as an event which does or is likely to cause **extreme** physical and/or emotional distress to clients and staff and may be regarded as outside the normal range of experience of the people affected.
- Critical Incidents can be classified into 2 categories, each with 2 different levels of responsiveness

Level 1 Critical Incident:

- immediate verbal advice to the Regional Director (or similar level officer);
AND
- completion of a Critical Incident report within four business hours.

Level 2 Critical Incident:

- immediate verbal advice to the Manager (or similar level officer);
AND
- completion of a Critical Incident report by 5pm the next business day.

- Some examples of critical incidents and the associated may include the following;

LEVEL 1 - Immediate verbal notification to the Regional Director followed by critical incident report form submitted within four business hours of the staff member becoming aware of the incident

1.1 Death of a person	<ul style="list-style-type: none"> • who was a child or young person known to Child Safety in the previous 12 months; or • with a disability which is defined as a 'death in care' under the <i>Coroners Act 2003</i>; or • where another client, foster or kinship carer or staff member is allegedly involved in the death; or • while attending or using department provided or funded services, facilities or activities
1.2 Life threatening injury to a person	<ul style="list-style-type: none"> • where another client, foster or kinship carer or staff member is allegedly involved in the injury; or • while attending or using departmental provided or funded services, facilities or activities
1.3 Serious injury to a child that results in hospitalisation	<ul style="list-style-type: none"> • when a child or young person, currently known to Child Safety or known to Child Safety in the previous 12 months, is believed to have an injury that meets the definition of a serious physical injury under the Child Protection Act 1999
1.4 Abduction	<ul style="list-style-type: none"> • abduction of a child or young person subject to departmental intervention from their carer/service provider
1.5 Major security incident	<ul style="list-style-type: none"> • a major security incident involving an emergency response to a hostage situation, fire, power failure, bomb threat or discovery of a bomb
1.6 Alleged rape, sexual assault or serious assault of a child under 14 years	<ul style="list-style-type: none"> • with a disability while attending or using departmentally provided or funded services, facilities or activities; or • of or by a child or young person subject to departmental intervention; or • while attending or using department provided or funded services, facilities or activities

LEVEL 2 - Immediate verbal notification to the manager followed by a critical incident report form submitted by 5pm next business day of the staff member becoming aware of the incident	
2.1 Serious injury to a person that results in hospitalisation	<ul style="list-style-type: none"> • where another client, foster or kinship carer or staff is allegedly involved in the injury; or • while attending or using department provided or funded services, facilities or activities
2.2 Alleged rape, sexual assault or serious assault	<ul style="list-style-type: none"> • of a person with a disability while attending or using department provided or funded services, facilities or activities; or • of or by a child or young person subject to departmental intervention; or • of or by a person while attending or using department provided or funded services, facilities or activities; or • of a departmental staff member whilst performing their duties
2.3 Attempted suicide	<ul style="list-style-type: none"> • of a person in a departmental facility; or • of a person who is a client of accommodation support provided or funded by the department; or • of a child or young person in care
2.4 Missing Child	<ul style="list-style-type: none"> • any child whose location is unknown and there are fears for the safety or concern for the welfare of that child •
2.5 Missing person	<ul style="list-style-type: none"> • clients who are missing from their place of residence where there are serious concerns for their safety or wellbeing due to their vulnerability
	<ul style="list-style-type: none"> • where another client, staff member or direct carer is allegedly involved; or • who is a client of accommodation support provided by the department

8. Specific Scenarios

(Allegation Scenario A) The alleged offender is a staff member.

BCL must ensure that all reasonable steps are taken to avoid contact between the person thought to have been subjected to abuse, assault or neglect and the alleged offender. This may involve:

- a) Supervision of any interactions;
 - b) Immediate allocation to alternative duties;
 - c) Immediate suspension from duties, depending on the nature of the circumstances.
- BCL will ensure that the legal rights of the staff member are not infringed upon, that the conditions of their industrial award (if applicable) are not infringed upon, and their right to natural justice is upheld.

(Allegation Scenario B) The alleged offender is a person outside of the organisation.

The service provider will ensure that where possible, all interactions will be avoided or will occur only where it is required and under appropriate supervision.

(Allegation Scenario C) The alleged offender is BCL service user.

BCL will take all reasonable steps to avoid contact between the person thought to have been subjected to abuse, assault or neglect and the alleged offender.

We will ensure that:

- a) A staff member supervises any interactions between the person and alleged offender;
 - b) Assistance is offered to both parties in their interactions with the police or other relevant organisation or authorities;
 - c) Both parties are provided with appropriate accessible information about their legal rights, options, and support services; or be given the opportunity to access this information.
- BCL will also ensure the alleged offender has access to a support person or advocate who can assist the person through the investigation and interview process and facilitate legal representation.
 - This person should be someone who is without prejudice and is chosen by the alleged offender for example; guardian and/or advocate, family member, friend, or someone who is not involved with the inquiry.

(Outcome Scenario A)

The offender is found to be criminally responsible or found guilty with no conviction recorded, after an investigation.

- If the offender is found to be criminally responsible or found guilty with no conviction recorded, BCL will take appropriate disciplinary action.
- Provisions in relation to such action are made in accordance with the Industrial Relations Act 1999 and the staff member's employment contract, terms of employment, code of conduct or similar employment agreement which was a condition of employment.
- In such instances, BCL must ensure that natural justice has been afforded to the staff member and that the decision to initiate disciplinary action is based upon a full and documented consideration of the facts, context, intent and impact of the original offence(s).
- BCL must seek advice from their employee relations adviser, legal adviser or another relevant industry body such as the Queensland Confederation of Commerce and Industry (QCCI) or similar peak body or organisation which represents and supports organizations and service providers.
- The outcome and any subsequent actions of the investigation and response must be documented and kept secure. Access to this information must be restricted to those that have a proper or lawful right to this information.
- At the conclusion of the investigation process, a full review of the incident and all subsequent actions must be undertaken by BCL to determine the effectiveness of the response procedure and highlight good practices and actions that may be implemented to minimise the risk of the situation re-occurring.

(Outcome Scenario B)

Where internal or independent investigations were conducted, no charges were laid, or the alleged offender is not prosecuted or found criminally responsible.

- The standard of proof in criminal matters is 'beyond reasonable doubt'. This is a higher or stronger level of proof than is required for an industrial or disciplinary process, which only requires that the matter be proved on the balance of probabilities. The finding

of not guilty in a criminal case involving allegations of abuse, assault and neglect by staff against a consumer of the service does not therefore prevent an employer from taking disciplinary or other appropriate action.

- BCL must conduct an investigation. In most incidences an independent investigation is recommended. Contact the Office of the Adult Guardian for advice on this matter.
- The outcome of this investigation must include recommendations to prevent the incident re-occurring. This may include BCL undertaking disciplinary or other appropriate actions.

Appropriate actions that may be available to BCL:

- Counselling for the staff member
 - Additional training
 - Transfer of duties
 - Increased supervision
 - Official warning
 - Dismissal
- BCL must ensure that the staff member has been afforded natural justice before any action is taken. Any actions or decisions must be based upon a full and documented consideration of the facts, context, intent and the impact of the original incident.
 - BCL should seek advice from its employee relation's adviser, legal adviser, or a relevant industry body such as the QCCI or organisation that represents and supports organisations and service providers.
 - The outcome, and any subsequent actions of the investigation and response, must be documented and kept secure. Access to this information must be restricted to persons that have a proper or lawful right to this information.
 - At the conclusion of any investigation process, a full review of the incident and all subsequent actions must be undertaken to determine the effectiveness of the response procedure and highlight good practices and actions that may be implemented to minimise the risk of the situation re-occurring.

Support and Debriefing

- BCL will ensure that the person subjected to abuse, assault or neglect, is provided with and/or assisted to access opportunities for support, counselling and/or debriefing. We may wish to contact local advocacy services or the Office of the Adult Guardian for advice.
- BCL should offer other involved or concerned staff an opportunity for debriefing as well as informing them of other available counselling or support services.
- Support, counselling and debriefing may also need to be provided to other consumers or to families and carers or advocates of the victim(s).

9. Further Advice

- **the Queensland Police**; 000 for emergencies, 131 444 for non-emergencies.
- **the Office of the Adult Guardian**; 1300 653 187, adult@publicguardian.qld.gov.au
- **a community visitor**; 1300 653 187, adult@publicguardian.qld.gov.au
- **the Public Advocate**; +61 7 3224 7424, public.advocate@justice.qld.gov.au
- **the Ombudsman**; 1800 068 908, ombudsman@ombudsman.qld.gov.au
- **the Public Trustee**; 1300 360 044, clientenq@pt.qld.gov.au
- **the National Disability Service Abuse and Neglect Hotline**; 1800 880 052, hotline@workfocus.com
- **Department of Communities**; or, where appropriate, 13 QGOV (13 74 68) disabilityinfo@disability.qld.gov.au
- **the Queensland Crime and Corruption Commission**. (07) 3360 6060
- **Child Safety Services Centres**: 1300 703 762

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