

## Identifying and responding to abuse of older people

**Summary** This Policy Directive describes how to identify and respond to abuse of older people and requires NSW Health organisations to develop and implement local protocols and to ensure staff are trained.

**Document type** Policy Directive

**Document number** PD2020\_001

**Publication date** 29 January 2020

**Author branch** Health and Social Policy

**Branch contact** (02) 9424 5944

**Replaces** PD2018\_027

**Review date** 29 January 2023

**Policy manual** Not applicable

**File number** H19/125787

**Status** Active

**Functional group** Clinical/Patient Services - Aged Care, Incident Management

**Applies to** Ministry of Health, Public Health Units, Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, NSW Health Pathology, Public Health System Support Division, Cancer Institute, Community Health Centres, NSW Ambulance Service, Public Hospitals

**Distributed to** Ministry of Health, Public Health System, NSW Ambulance Service

**Audience** All Staff of NSW Health

## **IDENTIFYING AND RESPONDING TO ABUSE OF OLDER PEOPLE**

### **PURPOSE**

This Policy Directive sets out the NSW Health requirements for identifying and responding to abuse of older people. This includes the responsibility of NSW Health organisations to develop and implement local protocols and provide staff training.

The Policy Directive outlines what staff should consider when identifying and responding to abuse of older people such as capacity, consent, and diversity of older people.

The attachments in the Policy Directive include resources to support NSW Health organisations develop their own protocols to identify and respond to abuse of older people.

### **MANDATORY REQUIREMENTS**

All NSW Health organisations are required to develop protocols and provide training to ensure staff can identify and respond to abuse of older people.

NSW Health organisations local protocols are to include:

- local escalation processes and training requirements for staff
- how to escalate matters to the police
- how to contact the NSW Ageing and Disability Abuse Helpline
- pathways for coordination with other services and agencies.

NSW Health organisations must also comply with existing policies and protocols on compulsory reporting for Commonwealth-funded aged care services and contacting emergency services.

NSW Health staff must consider consent, capacity, confidentiality, and reporting obligations when determining the appropriate response and support for older people who are being abused.

The Policy Directive must not be amended, added to or otherwise altered or rebadged.

### **IMPLEMENTATION**

#### **Roles and responsibilities of the NSW Ministry of Health:**

- Provide NSW Health organisations with advice and assistance on implementation of this Policy Directive.
- Monitor and review the implementation of this Policy Directive including reporting to the interagency steering committee and the NSW Interdepartmental Committee on progress for implementation (with NSW Ageing Strategy reporting).

### Roles and responsibilities of Chief Executives:

- Assign responsibility, personnel and resources to develop local protocols to implement identifying and responding to abuse of older people.
- Ensure this Policy Directive is communicated to and training is provided for frontline staff.
- Report on implementation of the policy to the Ministry of Health.

### Roles and responsibilities of health staff:

Ensure work practices comply with identifying and responding to abuse of older people.

## REVISION HISTORY

Version	Approved by	Amendment notes
January-2020 (PD2020_001))	Deputy Secretary, Health System Strategy and Planning	Revised to include: <ul style="list-style-type: none"> <li>• NSW Health responsibilities against the National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019–2023</li> <li>• Information about the NSW Ageing and Disability Commission</li> <li>• Updated references to the Elder Abuse Helpline to the NSW Ageing and Disability Abuse Helpline</li> <li>• The updated policy, PD2019_049 Compulsory Reporting Protocol for Residential Aged Care Services</li> <li>• Updated references, resources, policies and protocols.</li> </ul>
July 2018 (PD2018_027)	Deputy Secretary, Strategy and Resources	Initial policy.

## ATTACHMENTS

1. Identifying and responding to abuse of older people: Procedures.

## Identifying and responding to abuse of older people



**Issue date:** January-2020

PD2020\_001

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# 1 BACKGROUND

The NSW Government is committed to raising awareness about abuse of older people and developing prevention and response strategies as outlined in the *NSW Ageing Strategy 2016-2020*. The strategy notes that older people value safe communities as they age and safety from abuse is one of their key concerns<sup>1</sup>.

The *Preventing and responding to abuse of older people (Elder Abuse) NSW Interagency Policy (June 2018)* requires NSW agencies with significant interaction with older people to implement policies and protocols to identify and respond to abuse of older people. It also emphasises the importance of agencies and organisations working together to protect older people from abuse and respond to it when it occurs.

This Policy Directive and a training module have been developed to raise awareness of abuse of older people across the health system and outline the role of NSW Health organisations in supporting staff to identify and respond to abuse of older people. The training module 'Abuse of older people' is available for staff on the NSW Health Learning Management System: My Health Learning.

All NSW Health staff are responsible for identifying and responding appropriately to abuse of older people. Older people present at health settings more often than younger people and frontline health staff may be the first to identify abuse of an older person. Abuse can occur anywhere, including in the home, institutions or health care settings.

This Policy also supports the *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023*. The National Plan was developed in collaboration with state and territory governments and outlines the issues that all governments need to act on as a priority. It sets out a framework for ongoing cooperation, action and monitoring against five key priority areas:

1. Enhancing our understanding
2. Improving community awareness and access to information
3. Strengthening service responses
4. Planning for future decision-making
5. Strengthening safeguards for vulnerable older adults

NSW Health's responsibilities in the Implementation Plan to Support the National Plan to Respond to the Abuse of Older Australians 2019-2023 are to implement the health-related agency requirements of the NSW Interagency Policy. NSW Health is responsible for implementing and promoting the NSW Health policy and training module on identifying and responding to abuse of older people.

## 1.1 Definition

Australia has adopted the World Health Organization's definition of abuse of older people (also referred to as elder abuse):

*'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'<sup>2</sup>.*

Abuse of older people may take different forms and can include financial, psychological, physical, sexual abuse or neglect. These forms of abuse may occur at the same time. The definition of abuse does not include self-neglect or self-harm.

**Financial Abuse:** The illegal or improper use of an older person's property or finances. This includes misuse by a power of attorney, forcing or coercing an older person to change their Will, taking control of a person's finances against their wishes and/or denying an older person access to their own money.

**Psychological Abuse:** The infliction of mental stress involving actions and threats that cause isolation, fear of violence, deprivation and feelings of shame and powerlessness. This includes verbal intimidation, including forcing a person into making decisions against their will, humiliation and harassment, threats of physical harm and institutionalisation, and withholding affection, including refusing access to grandchildren.

**Physical Abuse:** The infliction of physical pain and injury. This includes physical coercion, physical restraint or confinement, including using chemical restraints such as alcohol, medications, household chemicals or poisons.

**Sexual Abuse:** A range of sexual acts where the victim's consent has not been obtained or where consent has been obtained through coercion. This includes non-consensual sexual language or behaviour, inappropriate touching, sexual assault and rough or inappropriate cleaning or treatment of genital area.

**Neglect:** The failure of a 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<sup>3-7</sup>.

### 1.2 Abuse of older people in NSW

This Policy defines older people as all people aged 65 and over and Aboriginal people aged 50 and over. Data on incidence and prevalence of abuse of older people is limited and it is likely that many cases of abuse are not reported<sup>8</sup>.

The 2015-16 report from the former NSW Elder Abuse Helpline and Resource Unit (now part of the NSW Ageing and Disability Commission) showed that psychological and financial abuse were the most common types of abuse reported. Around 70% of victims are women, and around 70% of perpetrators are family members, particularly adult children with around 10% being partners<sup>9</sup>. This is broadly consistent with data from other services across Australia<sup>10</sup>.

### 1.3 Risk factors

Older people may be more vulnerable to abuse than the general population. This is attributed to higher care needs, frailty, and increased dependency on family members and/or cognitive decline.

Australian and international literature suggests a number of risk factors associated with the abuse of older people. Experiencing abuse as an older person can be associated with:

- cognitive impairment and other forms of disability
- having multiple chronic comorbidities, in particular depression and dementia
- social isolation
- traumatic life events
- being female
- having been a victim of domestic violence earlier in life
- poor financial literacy<sup>11-18</sup>.

Risk factors for perpetrators of abuse include:

- substance abuse, for example drug or alcohol misuse
- stress
- the perpetrator being dependent (financially or emotionally) on the older person
- gambling addiction and/or financial hardship of potential perpetrators<sup>11, 15</sup>.

Australian and international literature suggests barriers to disclosing abuse include:

- social isolation
- cognitive impairment
- dynamics of dependence, particularly if an older person is abused by a carer
- shame
- fear of repercussions from family or community<sup>10, 12, 19</sup>.

### **1.4 Identification of abuse of older people across the health system**

Abuse of older people may be identified anywhere in the health system. It is the responsibility of all NSW Health staff to identify and respond to abuse of older people.

Some examples of where abuse of older people may be identified are:

- hospital presentation (including emergency departments, outpatient clinics, family case conferencing, inpatient admissions and admission to an aged care unit)
- presentation at general practitioner clinics
- aged care assessments (Aged Care Assessment Teams (ACAT) and Regional Assessment Service (RAS))
- admission to residential aged care facility
- community-based nursing and allied health care including home visits

- mental health services including services specifically for older people
- outreach services
- ambulance services<sup>11, 13, 20, 21</sup>.

### 1.5 NSW Ageing and Disability Commission

The NSW Government established the Ageing and Disability Commission in July 2019 to better safeguard older people and adults with disability from abuse, neglect and exploitation in home and community settings.

The Commissioner has a vision for every older person and adult with disability to feel safe, respected and dignified in their home, and in the community. Their focus is to:

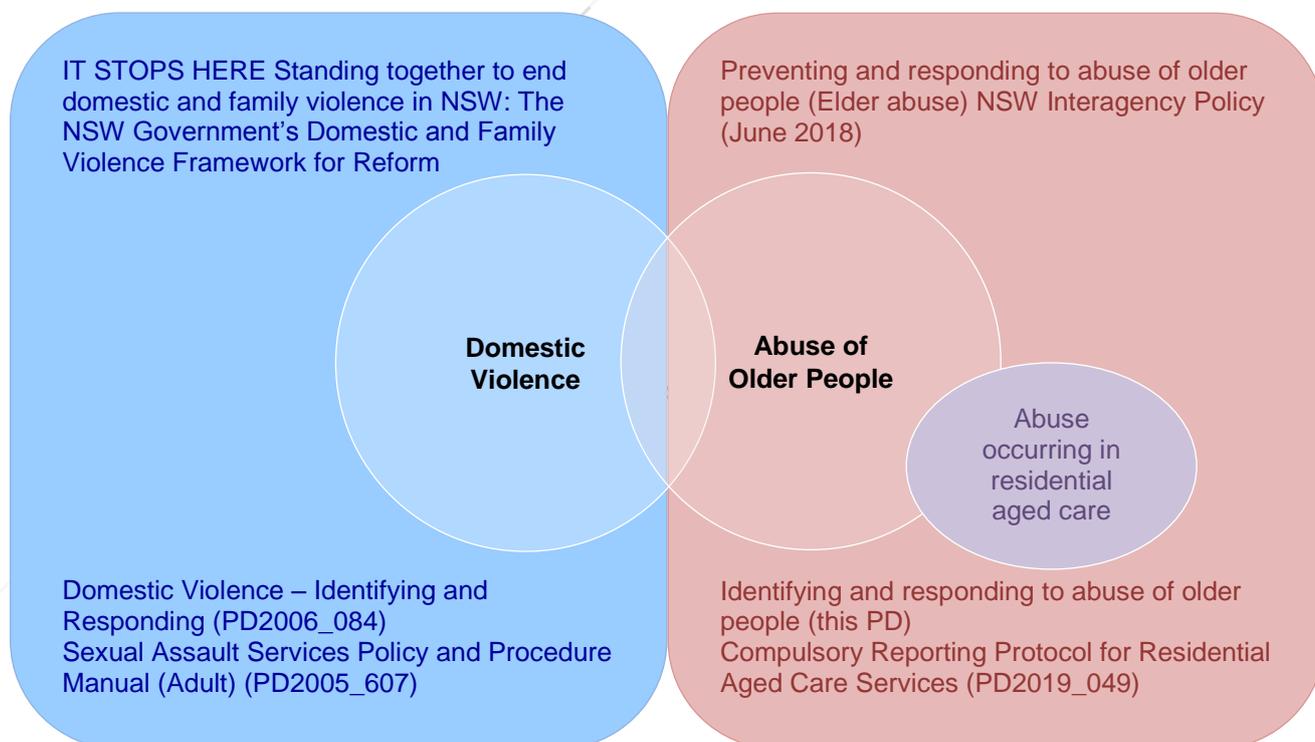
- provide support to those at need
- raise community awareness to reduce and prevent abuse, neglect and exploitation toward older people and adults with disability
- investigate concerns and allegations of abuse, neglect and exploitation
- report and advise government on related systemic issues.

The Commissioner will review and investigating cases of abuse, neglect and exploitation of older people and adults with disability in NSW, where no other complaint or investigative body can.

The Commissioner's role does not investigate the conduct of paid service providers for older people or adults with disability. Instead, the focus is on the conduct of the person's family and other informal supports, or members known to them from the community.

Anyone can contact the Commission to access information or make a report about the abuse, neglect and exploitation of adults with disability and older people living in their home and in the community. The Commission works closely with all relevant regulatory bodies and government agencies to support information sharing and referral pathways.

## 2 INTERSECTION WITH OTHER NSW POLICY DIRECTIVES AND PROTOCOLS



**Figure 1:** Interaction between Abuse of Older People, Domestic Violence and Sexual Assault  
This Policy provides a high-level approach for NSW Health organisations to identify and respond to abuse of older people. It aligns with the NSW Interagency Policy and the National Plan. Depending on individual circumstances, the related policies will provide specialised information.

It is important to recognise that older people may be victims of domestic violence and sexual assault, and may be supported by services for victims of domestic violence and sexual assault. All local health districts have pathways to these services. Consultation with these services should occur where domestic violence and/or sexual assault are identified.

See *Attachment 3* for links to these policies.

### 3 NSW HEALTH ORGANISATIONS' RESPONSIBILITIES

NSW Health organisations are required to have local protocols to guide staff in identifying and responding to abuse of older people. Local protocols must include:

- **Escalation processes and training requirements for staff.** NSW Health organisations are required to identify staff with expertise who can support other staff in managing situations where abuse of an older person is suspected or has been identified. See *Attachment 5* for a proposed model of staff responsibilities and suggested training opportunities which NSW Health organisations can adapt to local situations.
- **Guidance for escalating matters to NSW Police.** Where there is a risk of immediate harm or reasonable grounds to believe a crime has been committed this must be reported to NSW Police. See *Attachment 3* for the link to the *NSW Interagency Policy* describing how to manage serious crimes.
- **Guidance for contacting the NSW Ageing and Disability Abuse Helpline.** The NSW Government funds the helpline as a central point of contact for information, advice, referral and data collection. Local protocols must include when to seek advice or notify the helpline. See *Attachment 3* for contact details.
- **Pathways for coordinating with other local services and agencies.** Older people experiencing abuse may come into contact with various services and agencies. It is an essential requirement of the *NSW Interagency Policy* that agencies collaborate with key partners at a local level.

See *Attachment 6* for a sample action plan and information to implement local protocols.

#### 3.1 Duty of care

All NSW Health staff have a duty of care to clients, carers and other staff. They have a responsibility to identify abuse of older people and respond appropriately. This may include referring the older person to other services.

NSW Health staff are to implement appropriate interventions to ensure safety of the older person, including reporting the matter to the NSW Police where required. Appropriate referrals to other services, including clinical services, should also be made. Staff need to consider capacity, consent, and confidentiality in their approach.

NSW Health organisations are required to ensure that staff are trained to refer older people to other services. Staff may need to intervene where appropriate to ensure the older person is safe. A breach of duty of care may occur if staff fail to provide appropriate care or provide care that falls short of the expected standard of competent professional practice.

### 3.1.1 Abuse by NSW Health staff

When the alleged perpetrator is a NSW Health staff member, they may have committed a criminal act and/or breached the NSW Health Code of Conduct. The appropriate procedures and escalation protocols for investigation of abuse must immediately be activated in these situations. Requirements for reporting serious indictable offences under s316 of the *Crimes Act 1900* and Commonwealth compulsory reporting for aged care still apply.

Staff must report any breach or concerns to their line manager. If staff are not comfortable reporting to their line manager, they should report the matter to a more senior staff member.

Managers are responsible for addressing the alleged breaches promptly, fairly and reasonably. They must assess the seriousness of any alleged breaches, and how the breach should be dealt with. Possible outcomes for a staff member who has breached the Code of Conduct may be:

- counselling
- performance improvement plans
- formal disciplinary action
- referral to the relevant registration board when the staff member is a registered health practitioner
- referral to the police in cases of suspected criminal activity
- referral to other Government agencies, such as the Independent Commission Against Corruption
- termination of employment.

See *Attachment 3* for the links to the *NSW Health Code of Conduct (PD2015\_049)* and *Managing Misconduct (PD2014\_042)*.

### 3.2 Documenting incidents

Staff must document abuse according to the NSW Health record keeping policies and procedures. If abuse is suspected and/or abuse has occurred and the older person has not consented to the abuse being reported, or refused other assistance or intervention, this must also be documented.

See *Attachment 3* for links to the *Health Care Records – Documentation and Management (PD2012\_069)* and *Domestic Violence – Identifying and Responding (PD2006\_084)*.

### 3.3 Compulsory reporting for Commonwealth-funded aged care services

This Policy does not replace existing NSW Government and Australian Government compulsory reporting requirements for Commonwealth-funded aged care services. All reportable assaults must be reported within 24 hours to NSW Police and the Australian

Government Department of Health to meet the requirements in Section 63 of the Aged Care Act 1997 (Cth). This applies to State Government Residential Aged Care Facilities (SGRACFs), residential Transitional Aged Care Programme, and Multipurpose Services.

For Transitional Aged Care Programme services provided at the person's home and Commonwealth Home Support Programme services, please see the most up to date guidelines, on the Department of Health website, for reporting serious risks and incidents requirements.

See Attachment 3 for the link to *Compulsory Reporting Protocol for Residential Aged Care Services (PD2019\_049)*.

## 4 CAPACITY AND CONFIDENTIALITY

### 4.1 Decision-making capacity

Where abuse is suspected, NSW Health staff must consider the decision-making capacity and ability of the older person to consent to reporting or responding to the abuse. NSW Health staff should assume that the older person has capacity to make their own decisions and give consent, unless proven otherwise. It is, however, important to acknowledge that as people age, they are more likely to have medical conditions that may affect their decision-making capacity.

A person's capacity can change over time and determining capacity is decision-specific, for example, capacity may be diminished due to stress or trauma. This means the older person's capacity is to be assessed throughout the reporting process and as support is provided. The capacity assessment principles<sup>22</sup> are:

1. Always presume a person has capacity
2. Capacity is decision-specific
3. Don't assume a person lacks capacity based on appearances
4. Assess the person's decision-making ability, not the decision they make
5. Respect a person's privacy
6. Substitute decision-making is a last resort.

See Attachment 3 for a link to the *NSW Government Capacity Toolkit*.

### 4.2 Substitute decision-making

Where an older person lacks decision-making capacity to determine the response to abuse, consent must be obtained from the substitute decision-maker. This must not be the suspected perpetrator of abuse.

If there is uncertainty about the older person's decision-making capacity, staff must refer the older person to the appropriate specialist service or professional to assess capacity, such as their general practitioner, a geriatrician or psychologist. This may result in an application to the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT), whose role is to appoint substitute decision-makers.

See Attachment 4 for the *Person Responsible Hierarchy* and the glossary in Attachment 1 for definitions.

### 4.3 Consent

Older people and their substitute decision-maker have the right to refuse help and not report abuse. The older person should determine if they would like to address the abuse and consent to do so. Where the older person does not provide consent, staff should inform the older person about the available resources and helplines, in case they change their mind.

Consent of the older person or substitute decision-maker is not required in situations that require emergency services or compulsory reporting.

### 4.4 Confidentiality and reporting obligations

All NSW Health staff must follow requirements in the NSW Health Privacy Manual and maintain client privacy and confidentiality. Information can be disclosed if there are reasonable grounds to believe there is a serious and/or imminent threat to the safety of the older person or another individual.

The Privacy Manual states that for staff to disclose health information to law enforcement agencies:

*'the disclosure must be reasonably necessary to the functions of the law enforcement agency and there are reasonable grounds to believe that an offence may have been or may be committed.'*<sup>23</sup>

In the first instance, the older person are to be encouraged and offered support to report the matter themselves. The older person must be told if a health professional intends to make a report on their behalf.

See Attachment 3 for a link to the *NSW Health Privacy Manual for Health Information (Chapter 11)*.

## 5 RECOGNISING DIVERSITY OF OLDER PEOPLE

Sensitive and appropriate identification and response pathways are needed when abuse is identified for any older person. It is important to recognise that past experiences may affect a person's decision to disclose or report abuse. It may also be pertinent to consider the relationship or perception the older person may have of government entities and how past experiences of discrimination may affect willingness to report abuse. Trauma-informed approaches are important for all people who have experienced past abuse.

### 5.1 Aboriginal People

NSW Health organisations must provide culturally appropriate services and support to older Aboriginal people who may be experiencing abuse.

There is limited research on abuse of older Aboriginal people. A Western Australian report found that financial abuse is the most common type of abuse, consistent with the wider community, while other types of abuse also occur<sup>24</sup>. However, cultural expectations about kinship structures, sharing and reciprocity may complicate the way abuse is experienced and understood in Aboriginal communities<sup>24</sup>. Reasons for not disclosing abuse may be similar to those in the broader community, but influenced by other historical, social, cultural and pragmatic factors.

NSW Health organisations are to work collaboratively with Aboriginal health workers, Aboriginal family health workers and Aboriginal health units. Local programs may provide interventions and support services that are culturally sensitive and appropriate for older Aboriginal people experiencing abuse.

See Attachment 3 for links to the *Aboriginal Family Health Workers – Operational Guidelines (GL2009\_001)* and the *NSW Health Aboriginal Family Health Strategy*.

### 5.2 People from culturally and linguistically diverse backgrounds

Cultural and linguistic factors may affect how someone understands abuse. For example, in many families, there are inter-generational attitudes about how to care for the older generation. This may relate to older generations keeping traditional beliefs and values from their country of origin, while younger generations may have adopted values and beliefs from the community they have settled in <sup>25-26</sup>.

Access to culturally-appropriate care services is essential for ongoing health and wellbeing and for health service delivery<sup>27</sup>. Research highlights the importance of being able to access services delivered in a familiar cultural context and language group. It is also important for practitioners to recognise the diversity within communities to avoid stereotyping<sup>28</sup>.

Older people, their families, and carers, who do not speak English as a first language, have the right to free, confidential, and professional interpreters when using NSW Health services. Professional interpreters promote effective communication, ensure quality and safety in care, and minimise potential adverse events. Children and other family members can not be used as interpreters.

The NSW Ageing and Disability Commission provides material in a range of community languages that includes information about what support services are available.

Refer to resources in Attachment 3 for the link to *Standard Procedures for Working with Health Care Interpreters (PD2017\_044)*.

### 5.3 Regional/rural communities

In smaller regional/rural communities, NSW Health staff, clients and community members may have concerns about identifying perpetrators of abuse within their own community. Perpetrators may have access to personal information about the person reporting the abuse and there are potential issues such as isolation, stigma, and fear of exclusion that may prevent reporting.

NSW Health organisations should take all measures to maintain the confidentiality of staff and others involved in the identification process. District specific protocols will ensure the response is appropriate for its local community.

### 5.4 Carers

Carers may be vulnerable to abuse or identified as perpetrators of abuse<sup>29, 30</sup>. NSW Health staff need to consider safety of all parties and ensure appropriate support is available, including care arrangements, when determining the appropriate response to abuse of an older person.

### 5.5 Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People

Older LGBTI people may experience abuse due to their gender identity or sexual orientation<sup>31</sup>. They are more likely to age alone or be socially isolated<sup>32</sup>. They may not rely on their biological families, but depend on alternative support networks, which may make them more vulnerable to abuse<sup>31-32</sup>.

Older LGBTI people are also more likely to hide their sexual orientation or gender identity due to fear of discrimination and lack of respect<sup>31</sup>. They often experience invisibility of their gender identity or sexual orientation<sup>32</sup>. This may lead to a reluctance to disclose and report abuse. Specific services such as Silver Rainbow LGBTI Ageing and Aged Care provide services to promote the wellbeing of older LGBTI people and raise awareness in the aged care sector.

Refer to resources in Attachment 3 for Silver Rainbow contact details.

## 6 LIST OF ATTACHMENTS

1. Glossary
2. References
3. Resources
4. Person Responsible Hierarchy
5. Proposed model of staff responsibilities
6. Sample NSW Health organisation Action Plan to guide implementation

## 6.1 ATTACHMENT 1: GLOSSARY

TERM	DEFINITION
Abuse of older people	NSW Health has adopted the World Health Organization’s definition of abuse of older people: <i>‘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’<sup>2</sup>.</i>
Clients	Patients, consumers and residential care clients in NSW Health settings.
Frailty	Vulnerable to increased risk of dependency in activities of daily living, hospitalisation, institutionalisation and dying when exposed to stress and physical frailty is potentially reversible <sup>33</sup> .
Older people	All people aged 65 years or over, and Aboriginal people aged 50 years or over <sup>34</sup> .
Serious crimes	A serious indictable offence is anything punishable by five or more years imprisonment. Serious crimes under NSW law: murder, attempted murder, sexual assault, acts of indecency, rape, sexual offences against people with cognitive impairment, physical assault, grievous bodily harm, poisoning to endanger life or inflict harm or to injure or cause distress, domestic violence, neglect, kidnapping, robbery/stealing, stealing or destroying wills, fraud, forgery, harassment and intimidation <sup>6</sup> .
<b><i>Types of abuse of older people</i></b>	
Financial abuse	The illegal or improper use of an older person’s property or finances. This includes misuse of a power of attorney, forcing or coercing an older person to change their Will, taking control of a person’s finances against their wishes and/or denying them access to their own money <sup>4, 6</sup> .
Psychological abuse	The infliction of mental stress involving actions and threats that cause isolation, fear of violence, deprivation and feelings of shame and powerlessness. This includes verbal intimidation, including forcing a person into making decisions against their will, humiliation and harassment, threats of physical harm and institutionalisation, and withholding affection, including refusing access to grandchildren <sup>4, 7</sup> .
Physical abuse	The infliction of physical pain and injury. This includes physical coercion, physical restraint or confinement, including using chemical restraints such as alcohol, medications, household chemicals or poisons <sup>3, 4</sup> .

Sexual abuse	A range of sexual acts where the victim’s consent has not been obtained or where consent has been obtained through coercion. This includes non-consensual sexual language or behaviour, inappropriate touching, sexual assault and rough or inappropriate cleaning or treatment of genital area <sup>4, 5</sup> .
Neglect	The failure of a 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 <sup>4</sup> .
<b>Legal Definitions</b>	
Carer	As defined under the <i>NSW Carers (Recognition) Act 2010</i> , a carer provides ongoing, unpaid support to a family member, neighbour or friend who needs help because of disability, terminal illness, chronic illness, mental illness and/or ageing. A person is not a carer if they care for a person as a paid employee, a volunteer or as part of education or training <sup>30</sup> .
Decision-making capacity	A person has decision making capacity if they are able to: <ul style="list-style-type: none"> <li>• understand the facts involved in the decision</li> <li>• understand the main choices that exist</li> <li>• weigh up the consequences of the choices</li> <li>• understand how the consequences affect them and their situation</li> <li>• communicate their decision<sup>22</sup>.</li> </ul>
Enduring power of attorney	An older person can engage an Enduring Power of Attorney to take control of their financial affairs and allowing financial and legal decisions to be made on their behalf, for example, selling their house or operating their bank account. An Enduring Power of Attorney manages an older person’s legal and financial affairs after he/she loses decision-making capacity. An Enduring Power of Attorney ceases once a person dies and the Will takes over. If an Enduring Power of Attorney is required but the person no longer has the capacity to understand the implications of using such an instrument, then an application can be made to the NSW Civil and Administrative Tribunal <sup>35</sup> .
Guardian (enduring)	An Enduring Guardian is appointed by a person to make lifestyle, health and medical decisions for them when they are no longer capable of doing this for themselves. An Enduring Guardian can make decisions such as where the person lives, what services are provided to them at home and what medical treatment they receive. An Enduring Guardian is appointed while the person still has capacity, however, enduring guardianship

	only comes into effect if and when capacity to make decisions is lost and will only be effective during the period of incapacity <sup>35</sup> .
Guardian (appointed)	A guardian is a substitute decision-maker with authority to make personal or lifestyle decisions about the person under guardianship. A guardian is appointed for a specified period of time and is given specific functions (e.g. the power to decide where the person should live, what services they should receive and what medical treatment they should be given). A private guardian may be appointed (a family member or friend) provided the circumstances of the matter allow for this and they meet the criteria set out in the legislation. Otherwise, the Tribunal will appoint the NSW Public Guardian <sup>35</sup> .
Power of attorney	A power of attorney is a legal document which appoints a person or trustee organisation (the attorney) to act on behalf of another (called the principal or donor) to manage assets and financial affairs. The attorney may be a family member, close friend or trustee organisation such as NSW Trustee & Guardian. Appointing an attorney gives that person the legal authority to act on their behalf while they are alive <sup>36</sup> .
Reportable assault	A reportable assault, as defined under the <i>Aged Care Act 1997</i> , is unlawful sexual contact, unreasonable use of force, or an assault that constitutes an offence against a law of the Commonwealth or a State or Territory, that is inflicted on a person receiving residential aged care. <ul style="list-style-type: none"> <li>• Unreasonable use of force or assault on a care recipient ranges from deliberate and violent physical attacks on care recipients to the use of unwarranted physical force.</li> <li>• Unlawful sexual contact on a care recipient means any sexual contact with a care recipient where consent has not been given<sup>37</sup>.</li> </ul>
Substitute decision maker	Substitute decision maker is a person or entity who has a formal legal arrangement in place for someone to make substitute decisions by using an advanced care directive, an enduring guardianship, a power of attorney or a guardianship or financial management order by the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) (advice received from Office of the Public Guardian 2018 May 28).

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### 6.3 ATTACHMENT 3: RESOURCES

#### **Aged Care Quality and Safety Commission**

This is a free service for anyone to raise their concerns, make a complaint or inquiry about the quality of care or services provided to people receiving Australian Government funded aged care. Contact details: 1800 951 822 (free call), Monday to Friday 9am to 5pm AEST.

[www.agedcarequality.gov.au/contact-us](http://www.agedcarequality.gov.au/contact-us)

#### **Cancer Council**

This service supports people with cancer and may help older people with cancer with financial and legal advice. Contact details: 13 11 20, Monday to Friday 9am to 5pm AEST.

[www.cancercouncil.com.au/get-support/legal-and-financial-assistance/free-legal-services/](http://www.cancercouncil.com.au/get-support/legal-and-financial-assistance/free-legal-services/)

#### **Carers NSW**

This is the peak non-government organisation for carers in NSW and provides supports to carers across NSW.

Contact details: 1800 242 636 (free call), Monday to Friday 9am to 5pm

[www.carersnsw.org.au](http://www.carersnsw.org.au)

#### **Carer Gateway**

This national online and phone service provides information and resources to support carers.

Contact details: 1800 422 737, Monday to Friday, 8am to 6pm local time.

[www.carergateway.gov.au](http://www.carergateway.gov.au)

#### **Health Justice Australia**

This is the national centre for health justice partnerships and includes a list of existing partnerships across NSW.

<http://www.healthjustice.org.au>

#### **Legal Aid NSW**

This service helps people with their legal problems.

Contact details: 1300 888 529

[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

#### **Mental Health Line**

This is a telephone service providing a telephone mental health triage assessment and referral service staffed by mental health clinicians.

Contact details: 1800 011 511 (24 hours)

[www.health.nsw.gov.au/mentalhealth/Pages/contact-service.aspx](http://www.health.nsw.gov.au/mentalhealth/Pages/contact-service.aspx)

#### **National Sexual Assault, Domestic Family Violence Counselling Service**

This 24-hour service supports people affected by sexual assault, domestic or family violence and abuse. Contact details: 1800 737 732

[www.1800respect.org.au](http://www.1800respect.org.au)

#### **NSW Ageing and Disability Abuse Helpline**

This is a free service to speak with a trained professional about concerns of an older person or adult with disability. It is part of the NSW Ageing and Disability Commission, established in July 2019. Contact details: 1800 628 221, Monday to Friday 9am to 5pm.

[www.ageingdisabilitycommission.nsw.gov.au](http://www.ageingdisabilitycommission.nsw.gov.au)

#### **NSW Civil and Administrative Tribunal (NCAT)**

This is the NSW Government specialist tribunal service. Resources include the Person Responsible Fact Sheet. Contact details: 1300 006 228

[www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)

### **NSW Trustee & Guardian (TAG)**

TAG's role is to act as an independent and impartial Executor, Administrator, Attorney and Trustee for the people of NSW. TAG also provides direct financial management services and authorisation and direction to private financial managers.

Contact details: 1300 364 103

[www.tag.nsw.gov.au](http://www.tag.nsw.gov.au)

### **NSW Police - Emergency services**

This service is to report crimes in emergency situations.

Contact details: 000 (24 hours)

### **NSW Police - Assistance Line**

This service allows you to report a crime over the phone that is not life threatening or a time critical emergency.

Contact details: 131 444 (24 hours)

### **Older People's Mental Health Services**

This NSW Health service offers assessment, care planning and case management to ensure the provision of coordinated services to older people with mental health problems.

[www.health.nsw.gov.au/mentalhealth/opmh/Pages/default.aspx](http://www.health.nsw.gov.au/mentalhealth/opmh/Pages/default.aspx)

### **Seniors Rights Service**

This is a community legal centre to protect the rights of older people.

Contact details: 1800 424 079

[www.seniorsrightsservice.org.au](http://www.seniorsrightsservice.org.au)

### **Silver Rainbow LGBTI: Ageing and Aged Care**

This service provides national coordination and support activities promoting the wellbeing of LGBTI older people.

[www.lgbtihealth.org.au/ageing/](http://www.lgbtihealth.org.au/ageing/)

## **NSW GOVERNMENT AND COMMONWEALTH POLICIES, PROTOCOLS, AND PLANS**

### **Aboriginal Family Health Workers – Operational Guidelines (GL2009\_001)**

[https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=GL2009\\_001](https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=GL2009_001)

### **Code of Conduct (PD2015\_049)**

[https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2015\\_049](https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2015_049)

### **Domestic Violence – Identifying and Responding (PD2006\_084)**

[https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2006\\_084](https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2006_084)

### **Health Care Records – Documentation and Management (PD2012\_069)**

[https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2012\\_069](https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2012_069)

### **IT STOPS HERE Standing together to end domestic and family violence in NSW, The NSW Government's Domestic and Family Violence Framework for Reform**

[www.women.nsw.gov.au/\\_data/assets/file/0003/289461/It\\_stops\\_Here\\_final\\_Feb2014.pdf](http://www.women.nsw.gov.au/_data/assets/file/0003/289461/It_stops_Here_final_Feb2014.pdf)

- It Stops Here Safer Pathway Overview  
[www.domesticviolence.nsw.gov.au/\\_data/assets/file/0013/301180/Overview\\_Safer-Pathway.pdf](http://www.domesticviolence.nsw.gov.au/_data/assets/file/0013/301180/Overview_Safer-Pathway.pdf)
- Safety Action Meeting Manual  
[www.domesticviolence.nsw.gov.au/\\_data/assets/file/0014/301181/Safety\\_Action\\_Meeting\\_Manual\\_2017.pdf](http://www.domesticviolence.nsw.gov.au/_data/assets/file/0014/301181/Safety_Action_Meeting_Manual_2017.pdf)
- How victims are supported through Safer Pathways  
[www.domesticviolence.nsw.gov.au/\\_data/assets/file/0016/301183/1\\_S\\_service\\_delivery\\_map.pdf](http://www.domesticviolence.nsw.gov.au/_data/assets/file/0016/301183/1_S_service_delivery_map.pdf)

### **Managing Misconduct (PD2014\_042)**

[https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2018\\_031](https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2018_031)

### **Compulsory Reporting Protocol for Residential Aged Care Services (PD2019\_049)**

[https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2019\\_049](https://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2019_049)

### **Victims Rights and Support Act 2013 No 37**

[www.legislation.nsw.gov.au/#/view/act/2013/37](http://www.legislation.nsw.gov.au/#/view/act/2013/37)

### **National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023**

[www.ag.gov.au/RightsAndProtections/protecting-the-rights-of-older-australians/](http://www.ag.gov.au/RightsAndProtections/protecting-the-rights-of-older-australians/)

### **NSW Code of Practice for the Charter of Victims Rights**

[www.police.nsw.gov.au/\\_data/assets/pdf\\_file/0004/285412/bk17\\_charter-code-practice.pdf](http://www.police.nsw.gov.au/_data/assets/pdf_file/0004/285412/bk17_charter-code-practice.pdf)

### **NSW Government Capacity Toolkit**

[www.justice.nsw.gov.au/diversityservices/Pages/divserv/ds\\_capacity\\_tool/ds\\_capacity\\_tool.aspx](http://www.justice.nsw.gov.au/diversityservices/Pages/divserv/ds_capacity_tool/ds_capacity_tool.aspx)

### **NSW Health Aboriginal Family Health Strategy 2011-2016**

<https://www.health.nsw.gov.au/aboriginal/Pages/pub-family.aspx>

### **NSW Health Privacy Manual for Health Information**

[www.health.nsw.gov.au/policies/manuals/Pages/privacy-manual-for-health-information.aspx](http://www.health.nsw.gov.au/policies/manuals/Pages/privacy-manual-for-health-information.aspx)

### **Preventing and responding to abuse of older people (Elder Abuse) NSW Interagency Policy (June 2018)**

[www.facs.nsw.gov.au/download?file=591024](http://www.facs.nsw.gov.au/download?file=591024)

### **Sexual Assault Services Policy and Procedure Manual (Adult) (PD2005\_607)**

[www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2005\\_607](http://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2005_607)

### **Standard Procedures for Working with Health Care Interpreters (PD2017\_044)**

[www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2017\\_044](http://www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2017_044)

### **2015 Legislative Council Inquiry into Elder Abuse (NSW Government Response)**

[www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2387#tab-governmentresponses](http://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2387#tab-governmentresponses)

## 6.4 ATTACHMENT 4: PERSON RESPONSIBLE HIERARCHY

Under section 33A (4) of the *Guardianship Act 1987*, there is a hierarchy of people who can be the person responsible. A person responsible is one of the following people in order of priority.

1. Guardian – An appointed guardian (or enduring guardian) who has been given the right to consent to medical and dental treatments.
2. Spouse or partner – If there is no guardian, a spouse, de-facto spouse or partner where there is a close continuing relationship.
3. Carer – If there is no spouse or partner, an unpaid carer who provides or arranges for domestic support on a regular basis.
4. Relative or friend – If there is no carer, a friend or relative who has a close personal relationship, frequent personal contact and a personal interest in the person's welfare, on an unpaid basis.

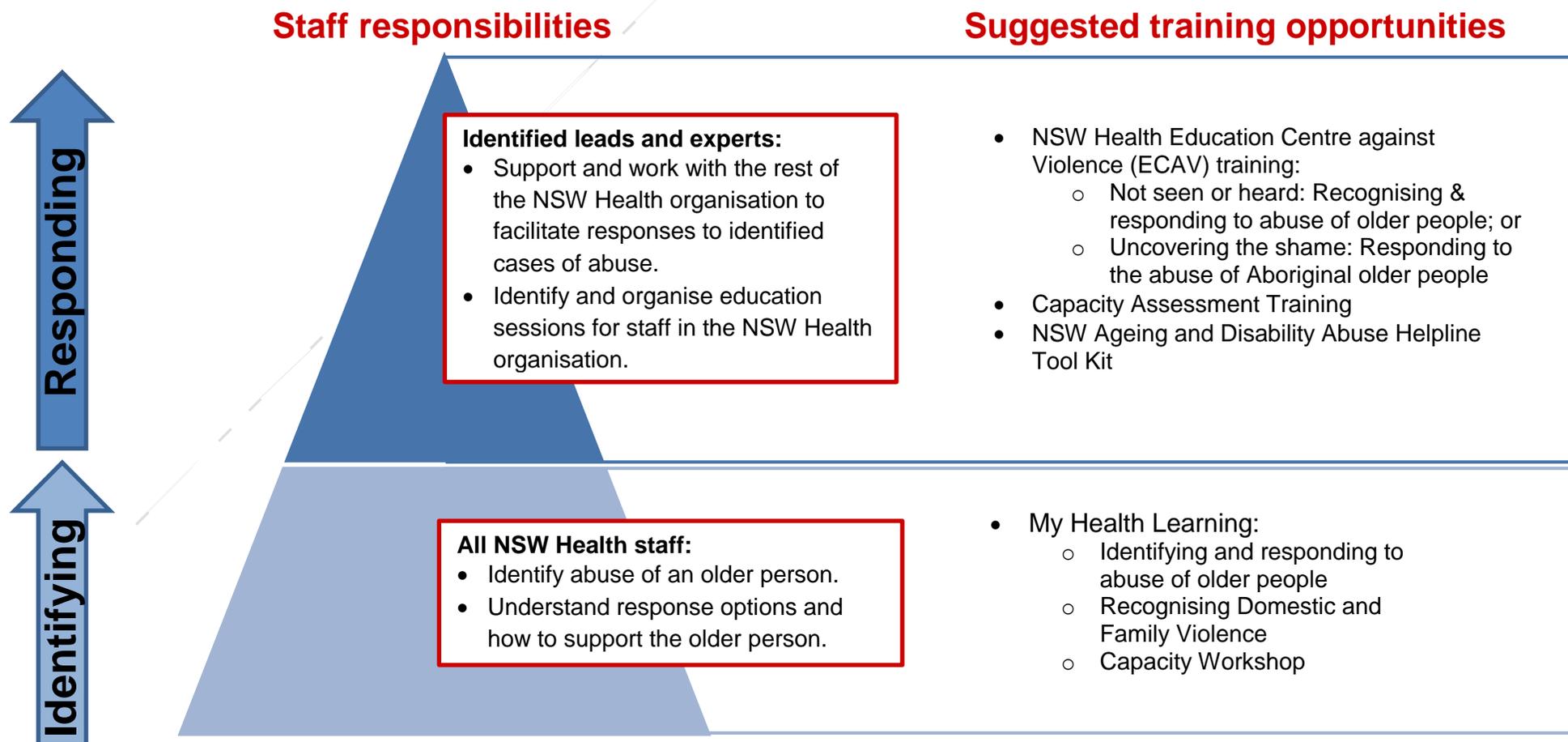
The person next in the hierarchy may become the person responsible if:

- a person responsible declines in writing to exercise the function, or
- a medical practitioner or other qualified person certifies in writing that the person responsible is not capable of carrying out their functions.

Refer to the NCAT Person Responsible Factsheet for further information.  
[www.ncat.nsw.gov.au/Documents/gd\\_factsheet\\_person\\_responsible.pdf](http://www.ncat.nsw.gov.au/Documents/gd_factsheet_person_responsible.pdf)

### 6.5 ATTACHMENT 5: PROPOSED MODEL OF STAFF RESPONSIBILITIES

Model adapted from the Hunter New England Delirium Clinical Care Standards Education Action Plan



## 6.6 ATTACHMENT 6: SAMPLE NSW HEALTH ORGANISATION ACTION PLAN AND INFORMATION TO GUIDE IMPLEMENTATION

The sample action plan and information provided below are intended as a tool to guide NSW Health organisations in the implementation of the policy and support the development of local protocols.

### *Implementation of NSW Health Policy: Identifying and Responding to Abuse of Older People*

Key Directions	Action Required	Resources/Support	Indicator/Outcome
Staff who have lead responsibility and expertise in abuse of older people are identified	<ul style="list-style-type: none"> <li>- Experts within the NSW Health organisations are identified and provided with appropriate training</li> <li>- Promotion/dissemination across NSW Health organisation of expert/lead contacts</li> </ul>	<ul style="list-style-type: none"> <li>- NSW Health organisations family violence teams</li> <li>- NSW Health Education Centre against Violence training:                             <ul style="list-style-type: none"> <li>o Not seen or heard: Recognising and responding to abuse of older people; or</li> <li>o Uncovering the shame: Responding to abuse of Aboriginal older people</li> <li>o Training sessions organised in partnership with the NSW Elder Abuse Helpline and Resource Unit</li> </ul> </li> </ul>	Percentage of identified leads and experts who attended training with the NSW Health Education Centre against Violence and/or the NSW Ageing and Disability Commission
Develop and implement local protocols	<ul style="list-style-type: none"> <li>- Develop NSW Health organisation protocol</li> <li>- Develop interagency protocols to guide joint responses</li> </ul>	<ul style="list-style-type: none"> <li>- Local policies and protocols in family violence</li> <li>- Sample policies and protocols developed by the NSW Ageing and Disability Commission</li> <li>- Existing NSW Health Organisation Protocols or Guidelines</li> </ul>	<ul style="list-style-type: none"> <li>- Each NSW Health organisation has a standing organisation-wide protocol on identifying and responding to abuse of older people in place</li> </ul>

## Identifying and responding to abuse of older people

Key Directions	Action Required	Resources/Support	Indicator/Outcome
Identify and implement local referral pathways	<ul style="list-style-type: none"> <li>- Develop local referral pathways to refer identified cases of abuse</li> <li>- All protocols must include interagency collaborations</li> </ul>	<ul style="list-style-type: none"> <li>- Local referral pathways for family violence</li> <li>- Culturally sensitive and appropriate family mediation meetings</li> <li>- Safer Pathways and Safety Action Meetings</li> </ul>	All NSW Health organisations have developed pathways for referral and response to abuse of older people, including collaboration with other agencies
NSW Health staff are trained appropriately	<ul style="list-style-type: none"> <li>- Identified staff to complete online training module on 'Abuse of Older People' in NSW Health's My Health Learning platform</li> <li>- NSW Health staff to participate in further training as required in their roles</li> </ul>	<ul style="list-style-type: none"> <li>- My Health Learning 'Abuse of Older People' module</li> <li>- NSW Health Education Centre against Violence:                             <ul style="list-style-type: none"> <li>o Not seen or heard: Recognising and responding to abuse of older people; or</li> <li>o Uncovering the shame: Responding to abuse of Aboriginal older people</li> </ul> </li> <li>- Existing Local Health District training modules</li> </ul>	<p>Percentage of staff who completed training within 3 months of commencement</p> <p>Percentage of staff who completed the online training module 'Abuse of Older People' on the My Health Learning platform.</p>

### INFORMATION TO GUIDE IMPLEMENTATION

#### Preventing and responding to abuse of older people: NSW Interagency Policy (June 2018)

The requirements of each NSW Government agency for the implementation are set out in appendix 3 of the NSW Interagency Policy. NSW Health organisations should use this to guide the development and implementation of local protocols.

[www.facs.nsw.gov.au/download?file=591024](http://www.facs.nsw.gov.au/download?file=591024)

#### Reporting and Data Requirements

## Identifying and responding to abuse of older people

NSW Health is required to report to the Department Communities and Justice against NSW Health's actions to implement the NSW Interagency Policy. The NSW Interagency Policy requires all agencies with significant interface with older people to examine how data collection on abuse of older people can be strengthened.

### Identifying and responding to abuse

The Elder Abuse Prevention Toolkit outlines a five-step approach to identifying and responding to abuse.

[www.ageingdisabilitycommission.nsw.gov.au/information-for-professionals/downloadable-toolkits-and-flyers/elder-abuse-prevention-toolkit](http://www.ageingdisabilitycommission.nsw.gov.au/information-for-professionals/downloadable-toolkits-and-flyers/elder-abuse-prevention-toolkit)

1. Identify abuse
2. Assess immediate safety
3. Provide support
4. Inform manager and document
5. Respond and refer

### Working with key partners

As outlined in the NSW Interagency Policy, NSW Health organisations should work with partner organisations, including government, non-government and community organisations, to develop appropriate local strategies to respond and support older people at risk of or experiencing abuse. An example of interagency management and coordination in another policy area is Safer Pathways and Safety Action Meetings (SAMs). NSW Health organisations may expand existing pathways and partnerships to include abuse of older people. Some NSW Health organisations have developed collaborative partnerships with local community legal services to provide legal assistance to patients of NSW Health care settings. For further information, please see [www.women.nsw.gov.au/programs/safer-pathway](http://www.women.nsw.gov.au/programs/safer-pathway) and IT STOPS HERE Standing together to end domestic and family violence in NSW, The NSW Government's Domestic and Family Violence Framework for Reform.