6.16 RESPONSE TO ALLEGED SEXUAL ASSAULT

PURPOSE

This policy outlines the procedures to be taken by staff when a person we support discloses an allegation of sexual assault or there is a suspicion that sexual assault has taken place.

This policy also outlines the procedures to be taken by Management if the person accused of sexual assault is a staff member of Kurrajong Waratah.

PROCEDURES

Response by staff when a person we support has allegedly been sexually assaulted:

1. At the first suspicion or report of a sexual assault of a person we support at Kurrajong Waratah, staff are to immediately contact their Manager.

2. Sexual assault is defined within Kurrajong Waratah as a ‘Critical Incident’. There is a policy and procedure to deal with the communication and processes for Critical Incidents (Policy 6.26 Management of Critical Incidents, Form 141 Critical Incident Flow Chart and Form 142 Critical Incident Management Plan). Under this plan, the Manager will inform the CEO or DCEO.

3. When the person we support alleges an assault, the Kurrajong Waratah Manager will explain to the person their options in dealing with the matter eg. making a police report, attending a hospital, or contacting the sexual assault team. The Manager is to obtain the person’s consent to contact these services. If the person does not have the capacity to make this decision, the Manager will gain consent from the person’s family (see Clause 17) or contact the Public Guardian.

4. When the person we support is a child (under 16 years) or young person (16 – 18 years), the Kurrajong Waratah is mandated to report the matter to NSW Department of Community Services. This reporting will be carried out by the CEO or DCEO. Under the NSW Children and Young Persons (Care and Protection) Act 1998, DOCS has the "lead" responsibility for providing care and protection for children and young people in NSW. The Department is mandated to co-ordinate responses and to ask other government agencies to provide appropriate care and support to children, young people and their families.

5. Where possible, consent for staff to deal with the situation (access help, communicate with other agencies) is to be recorded on Form 159 Authority to Obtain and Release Information. In a situation where a copy of that form is unavailable, the Manager should have the person sign a handwritten consent letter or have another person witness a verbal consent which is then recorded by the Manager and signed off by both witnesses.

6. If the alleged assault took place by another person who accesses Kurrajong Waratah services, the CEO or DCEO will advise the NSW Ombudsman (phone number: 1800 451 524).
7. **Offer Reassurance:**
   It is particularly helpful for long term recovery from a sexual assault if the person can be informed as early as possible that the sexual assault was not their fault. The person needs to feel believed, reassured, supported and acknowledged.

8. **Assistance with Communication Difficulties:**
   The Manager is to advise the Sexual Health Centre of any communication difficulties, behavioural difficulties or any background to the incident, where appropriate with the person’s permission. Staff may need to be prepared to provide appropriate communication tools such as communication boards, photos, flip cards, Compic, pen and paper, a Makaton book or an interpreter. In situations where a person is unable to communicate, consideration should be given to contacting the Office of the Public Guardian for advice and direction.

9. **Requirements for Ensuring Accurate Reporting of the Incident:**
   Staff are to attempt to ensure that the person who has been assaulted does not wash, bathe or change clothing. It is also preferable that the person does not have anything to drink if there is any possibility of a recent oral sexual assault. Similarly, it is preferable that the person does not go to the toilet if recent vaginal or anal penetration may have occurred. Whilst preferable, obviously these precautions should not be undertaken if the person is likely to become further distressed. The person’s comfort and emotional well-being should be considered and they be given an informed choice.

10. **Obtaining Consent for Forensic Examination:**
    Consent must be gained from the Office of the Public Guardian before any intrusive forensic examination takes place. This office can be accessed after hours by calling 02 8688 2650 or during business hours on 1800 451 510.

11. **Do Not Investigate:**
    It is important that staff do not undertake any investigative role. Any attempt to interview victims or perpetrators about the sexual assault could potentially jeopardise any resultant legal action. Additionally, any interview with the victim could be traumatic and so should be kept to a minimum.

12. **Accompanying the person to the Sexual Assault Centre:**
    The person who has been assaulted should be encouraged to invite a person of their choosing for support. The Manager, or a person nominated by the Manager, should also accompany the person to assist the Sexual Assault Counsellor where possible. This assistance may involve re-framing questions to the person or assisting to interpret the person’s responses. This should only be done under the direction of the Counsellor. Staff need to be mindful of the seriousness of the situation and should request assistance from Centre staff if unsure of their role in the situation.

13. **Reporting the Matter to the Police:**
    The person who has been assaulted may elect to report the matter to the police and the Sexual Assault Centre can assist this action by informing the person of their rights in this regard. If the person wishes to report the matter to the police, s/he should be accompanied by the Manager and a person of their choosing with whom they feel comfortable.
14. If the Person who has been Assaulted is Unwilling or Unable to Discuss an Incident:

At the Sexual Assault Centre, the person may or may not offer information or agree to examination. This has to be dealt with on an individual basis by the Manager and is best assisted by people with whom the person is totally familiar. The full details of the consultation to the Sexual Assault Centre must be written up and a report requested from the Sexual Assault Centre detailing their views on the matter. Such a report will only be released from the Sexual Assault Centre with the person’s permission.

15. Maintaining Confidentiality:

Conversations with all personnel (medical, law etc.) regarding the matter are strictly confidential and are to be documented on Form 118 Identification of Suspected or Actual Harm. All details of any discussions are to remain confidential and are not to be discussed with any other person. Issues dealing with suspected sexual assault are extremely sensitive and are a highly confidential matter.

16. Communicating with Families

The Manager will co-ordinate all necessary communications with families and advocates. Families will be informed of the matter, unless the person we are supporting has specifically requested for them not to be. The Manager should document that decision. Staff are not to communicate with families unless instructed by the Manager.

17. Informing Necessary Parties:

If a person we support at Kurrajong Waratah has been or is suspected of having been sexually assaulted, the Manager will contact the CEO or DCEO. If the assault involved a person living in our supported accommodation or group respite services, the CEO or DCEO will report the incident to the NSW Ombudsman as outlined in Section 5 of the Disability Inclusion Act 2014.

18. Guidelines for Communication on the Matter:

If questioned by family members, staff, media or external parties, no comment is to be made by staff and people should be informed that enquiries are to be referred to the CEO or DCEO.

19. Follow-Up:

All necessary follow-up services must be provided to protect the person who has been assaulted, both physically and psychologically. This may include:

- Security measures, changing locks etc.
- Relocation if necessary
- Ongoing counselling and support
- Medical examinations and tests
- Review of staffing

20. Documentation:

Form 118 Identification of Suspected or Actual Harm must be submitted to the Manager as soon as possible. If the person is unable to verify an assault, but behaviour or circumstances are suspicious, the Manager must be informed immediately and all relevant staff attend a meeting to discuss all known facts. All necessary precautions eg. additional staffing, sleepover staff etc. are to be put in
place. No individual staff person should rule out the possibility of an assault without following the above procedure. The CEO or DCEO will be informed.

21. Assistance for Staff:
   Staff are to be counselled regarding their professional role in supporting people who have been sexually assaulted and are to be provided with all necessary training and support. This training will include the identification of behaviours that might indicate an assault has taken place.

22. When Families or Members of the Community Suspect an Assault:
   The matter is to be brought to the attention of the Manager. Families and staff are requested not to attempt to investigate the matter by phoning, visiting people, or questioning the person or staff as this may hamper further enquiries.

23. Education:
   The Wagga Women’s Health Centre and the NSW Community Health Sexual Assault Education Unit provide courses and a training package on Sexual Assault of people with intellectual disability. The Community Health Sexual Assault Centre also provides telephone consultation to organisations and individual staff. This support is particularly helpful for long-term recovery and should be used if considered beneficial.

When a staff member has been accused of sexual assault against a person we support:

24. It is Kurrajong Waratah’s policy that a sexual relationship of any kind between a staff member and a person with a disability within the Organisation is prohibited. After initial investigation by the DCEO or CEO, if an allegation of sexual assault requires further investigation the staff member will be suspended on pay until the matter has been fully investigated. If the allegation was found to be true the staff member would be subject to summary dismissal.

25. The Deputy CEO or the CEO is also to be informed of the complaint prior to or concurrently with the issue being raised anywhere else, either by the individual making the complaint or by the Supervisor or Manager with whom the issue is raised. The matter may be brought to the attention of Kurrajong Waratah’s legal advisors.

26. In cases where it is alleged that a staff member has sexually assaulted a person who accesses our supported accommodation or centre-based respite services, the CEO or DCEO will report to the NSW Ombudsman as required under Section 5 of the Disability Inclusion Act 2014 within 30 days of becoming aware of the incident.

27. Kurrajong Waratah’s investigation of the allegation will be separate to any investigation instigated by other agencies eg. Police or Ombudsman, however the findings of that agency may be considered in the findings of Kurrajong Waratah.

28. The person against who the complaint has been made has a right to be informed before any investigation by Kurrajong Waratah begins.

29. An investigation into the complaint will be made by the DCEO or CEO immediately after a complaint is lodged. The investigation may include discussions with the
individual lodging the complaint, the person against who the complaint has been made, the Police and witnesses (if any) to the conduct or behaviour in question.

30. Investigations will be confidential. No information will be divulged to anyone who is not directly involved in the complaint or the investigation of it.

31. All due diligence will be brought to Kurrajong Waratah’s investigation. It will be an impartial, timely and complete investigation.

32. If, after consideration of all the facts of the complaint, a determination is made that the sexual assault upon a person we support by a staff member is found to have occurred, termination of employment will then promptly follow.

33. The matter will be recorded in the personnel file of a staff member who has been found to have sexually assaulted a person we support.

34. Victimisation of an individual who makes a sexual assault complaint constitutes grounds for termination of employment against the offending party. Kurrajong Waratah encourages all complaints relating to sexual assault to be taken to their immediate Supervisor or Manager.

35. A right of appeal exists in relation to any decision arising out of the investigation of a sexual assault complaint by Kurrajong Waratah. The appeal should be in writing and delivered to the Deputy CEO or the CEO within 14 days of delivery of the original decision.

36. The filing of an intentionally false report of sexual assault is a serious matter. If it is found that a staff member has lodged an intentionally false report against another staff member, disciplinary action up to and including termination of employment will be applied. Civil action may also be pursued.

37. If the allegation of sexual assault against a staff member is proved to be untrue, no further action will be taken by Kurrajong Waratah. The matter will not be recorded on the staff member’s personnel file. The staff member will be advised and offered support and appropriate counselling.

38. Kurrajong Waratah Management may contact the person we support who was found to have experienced sexual assault to confirm that all inappropriate and unwelcome contact or behaviour has stopped, and to confirm there have been no adverse consequences arising from the making of a complaint.

39. Failure to respond appropriately to a sexual assault complaint is prohibited by this policy and is illegal. Any Supervisor or Manager who receives a complaint of sexual assault and fails to take the appropriate action in accordance with this policy will be subject to disciplinary action. Failure to take such action constitutes grounds for termination of employment.

40. It is Kurrajong Waratah’s legal obligation to investigate all complaints of sexual assault, whether they have been brought to our attention formally or informally. Staff and the people we support are assured investigations will be guided by the principles of integrity and confidentiality.
RELATED DOCUMENTS

Form 159  Authority to Obtain and Release Information
Form 118  Identification of Suspected or Actual Harm
Policy 6.26  Management of Critical Incidents
Form 141  Critical Incident Flow Chart
Form 142  Critical Incident Management Plan

RESOURCES

 Draft NSW Department of Community Services Interagency Response RELEVANT

LEGISLATION

 Disability Inclusion Act 2014
 Children and Young Persons (Care and Protection) Act 1998
 Ombudsman Amendment (Child Protection and Community Services) Act 1998