



CRITICAL CLIENT INCIDENT DISCLOSURE POLICY

Department of Human Services (DHS)

Summary

This policy provides guidance in decision-making and action relating to the disclosure of information in the event of a Critical Client Incident.

Table 1: Document Details

Policy Number	N/A
Applies to	All of DHS and registered / funded service providers and contractors who provide services on behalf of the Department or to the Department
Issued by	Incident Management Unit
Delegated Authority	Chief Executive, Department of Human Services
Policy Custodian	Director, Incident Management Unit
Content author	Incident Management Unit, People Strategy and Systems
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Table 2 – Revision Record

Date	Version	Revision Description
August 2015	1.0	Implementation of Policy
December 2016	2.0	Policy updated to include Incident Management Unit
January 2019	2.1	Policy updated to include new Department and Division name changes
August 2019	2.2	Policy title change to differentiate from the new Public Interest Disclosure Policy
March 2021	3	Alignment with the Critical Client Incident Policy and minor amendment to Policy title

Table of Contents

Disclosing Critical Client Incidents Policy

1.	Policy Title	3
2.	Purpose.....	3
3.	Context.....	3
4.	Scope	4
6.	Policy Detail.....	6
6.1	Guiding Principles.....	6
6.2	Disclosure Requirements.....	7
6.3	Consultation and Advice	8
6.4	Disclosure Options.....	8
6.5	Roles and Responsibilities.....	9
7.	Risk.....	10
8.	Reference Documents	10
8.1	Directive documents	10
8.2	Supporting documents.....	11
8.3	Related documents and resources	11
9.	Aboriginal Impact Statement Declaration	11
10.	Policy Approval	11

1. Policy Title

Critical Client Incident Disclosure Policy

2. Purpose

This policy aims to:

- guide the department in decision-making and action relating to the disclosure of information in the event of a Critical Client Incident.
- ensure a systematic, consistent, considered, defensible and transparent approach to disclosure;
- support the safety and wellbeing of DHS clients, residents and other at-risk people and the community.
- ensure DHS meets its legal and other obligations in relation to disclosure; and
- minimise risk to clients, other parties and DHS.

3. Context

The Report of Independent Education Inquiry 2012-2013 (Debelle Report) considered the disclosure of information to parents and caregivers by the Department for Education and Child Development (DECD) when allegations of sexual misconduct against children are made. The Debelle Report noted that DECD should have in place sufficient processes in order to assess whether, and when, to disclose information to different groups who have an interest in obtaining the information. Following the incidents that triggered the Debelle Inquiry, and after the release of the Report, Government Ministers made a number of public statements indicating the government would undertake disclosure in relation to vulnerable persons who may be at risk of abuse or harm.

DHS also encounters situations where questions arise regarding disclosure. This includes, for example, where serious and credible allegations, are made about the abuse of a client by a worker (of DHS or a funded service provider) and there is the potential that others may also have been harmed. Therefore, following the release of the Debelle Report, DHS committed to developing a policy to guide disclosure decisions and practice across the department.

DHS delivers and funds programs and services to children, young people and adults in a range of settings, including many who are vulnerable and at risk. The vulnerability of these clients, and the nature of the services provided, heightens the department's responsibilities and duty of care, particularly for those who are vulnerable due to age, disability or life circumstances.

DHS routinely manages a range of client incidents, of varying severity, guided by policies and guidelines at both the departmental and divisional level. This policy is an important adjunct to these policies and procedures. All existing and future operational documents in relation to client incident management must be consistent with this policy.

4. Scope

This policy applies to all divisions in the department involved with the provision of direct client services or service providers or contractors who provide services to or on behalf of DHS. Organisations to whom DHS has provided grant funding (but who do not provide services on behalf of or to the Department) are not within the scope of this policy.

Included:

An Initial Critical Client Incident Disclosure Assessment must be conducted for all critical client incidents to identify if a full Disclosure Assessment is required. Disclosure considerations must be an integral aspect of critical client incident management.

Disclosure should also be considered for any other client incidents where there is the likelihood of significant harm to the client and/or other parties (whether current or in the past), and where it may be seen that DHS has a duty of care to disclose information to prevent harm or ameliorate its effects.

Excluded:

The scope of this policy does not include information that DHS is legally compelled to disclose.

Mandatory reporting and notification requirements are not within the scope of this policy and do not constitute disclosure. This includes, but is not limited to, reporting incidents and providing information to South Australia Police (SAPOL), the Coroner, the Health and Community Services Complaints Commissioner, the Guardian for Children and Young People, the Training Centre Visitor, the Child Abuse Report Line, and to Line Managers or other areas within DHS (such as the Incident Management Unit).

This policy does not apply to the routine provision of factual information to the legal guardians or next of kin of clients directly involved in an incident.

Following a client-related incident, legal guardians or next of kin should generally be provided with details as soon as practicable and in accordance with relevant legislation, and DHS policy and guidelines. However, it is noted that the facts and circumstances of each case must still be carefully reviewed to ensure legal and policy requirements are adhered to. This should take into account any special circumstances, restrictions or impediments to the provision of information (for example, consent to the provision of information by the client when they are aged over 18 years and not under a guardianship order; if a client is estranged from next of kin; if an investigation is underway). In such circumstances, decisions should be made using a person-centered approach and within the framework of this policy.

5. Definitions

Client: A person who receives, relies on or benefits from services delivered by DHS or its funded service providers. Interchangeable terms used include consumer and customer. Some areas of the department use specific descriptions depending on the service setting, (e.g., resident or service recipient). Clients of organisations to whom DHS has provided grant funding are excluded.

Critical Client Incident: Any incident declared a Critical Client Incident by the Director, Incident Management Unit, in accordance with the Critical Client Incident Policy.

Critical Client Incident Manager: A Department officer (generally at the Director level and appointed by the Director IMU) responsible for managing the incident until its conclusion. The Critical Client Incident Manager may delegate the supervision of the work required to manage the critical client incident to a responsible manager, usually the relevant unit manager.

Critical Client Incident Managers may also be appointed for other client incidents when determined necessary and appropriate.

Defamation: A statement or communication carrying an imputation that tends to lower the general estimation of the subject in the minds of ordinary, reasonable and fair-minded members of society.

Disclosure: Providing relevant, factual information about an incident to others not directly involved in the incident, but who may be affected, either directly or indirectly (e.g. family members of the affected client, other clients who may have been harmed and/or their families, guardians and caregivers). **Note:** Meeting reporting requirements (e.g. mandatory notification, reporting to SAPOL) does not constitute disclosure.

Disclosure decisions must take into account the potential for others to have been affected or harmed, still to be at risk of harm, or require assistance to alleviate the effects of harm; and risks in disclosing or not disclosing information.

Decisions must also take into account what information will be provided, to whom, for what purpose and with what justification, in what format and appropriate approval mechanisms, and will be made in accordance with the Information Sharing Guidelines and this policy.

Disclosure Assessment: A formal and structured assessment by senior staff to consider grounds for disclosure and develop recommendations for approval. A full disclosure assessment must include:

1. an assessment of information and evidence.
2. an assessment of legal and other obligations.
3. an assessment of risk; and

4. development of recommendations for consideration by the Director, Incident Management Unit, including proposed Disclosure Assessment Action Plan if deemed that disclosure or an alternative strategy may be required.

Refer to the Critical Client Incident Disclosure Assessment Procedure for further detail.

Critical Client Incident Disclosure Assessment Action Plan: A formal, detailed and documented plan to guide resulting actions when disclosure, or an alternative strategy, is recommended. Refer to the Critical Client Incident Disclosure Assessment Action Plan.

Disclosure Assessment Meeting: A formal meeting to undertake the Critical Client Incident Disclosure Assessment.

Funded Service Provider: Refers to a service provider, contractor or person who provide services on behalf of the Department or to the Department. This may include providers who are registered to deliver services under the National Disability Insurance Agency.

Information Sharing Guidelines (ISG): A set of principles and practices to be applied by DHS workers and funded service providers when making decisions regarding appropriate information sharing when there is a threat to the safety and wellbeing of an individual, or group of people, who are at risk of harm.

Initial Disclosure Assessment: An initial review of an incident, generally led by the Critical Client Incident Manager.

Refer to Disclosure Assessment Procedure for further detail.

6. Policy Detail

6.1 Guiding Principles

The following principles must guide the management of all disclosure considerations.

- **Primary commitment to clients:** The safety, wellbeing and best interest of clients, vulnerable people and the community is a primary consideration in decision-making and practice under this policy.
- **Legal and ethical obligations:** Act legally and ethically and in accordance with government policy.
- **Evidence and risk:** Decisions will be based on a thorough assessment of evidence, risks and options. Our decisions will be robust and defensible. If new evidence or risks emerge or situations change, decisions will be reviewed.
- **Fairness and rights:** Act fairly and with due consideration to the rights and interests of all parties, including victims, their families and alleged perpetrators.
- **Timeliness:** Decisions will be made in a timely manner.
- **Transparency and accountability:** Be transparent and accountable in our decision-making. Disclosure assessments, decisions and actions will be documented, and records will be kept. If a mistake is made, it will be acknowledged, and a remedy sought as soon as possible. If misinformation is disseminated, it will be corrected as soon as possible.
- **Consultative:** Decisions are better when made in consultation. Disclosure decisions are complex and will be based on consultation and expert advice.

- **Risk aware:** Be risk aware, but not risk averse. Seek to minimise risks to all parties.
- **Privacy:** Personal information will be collected, managed, used and disclosed in accordance with relevant policy and legislation, and in a manner that is respectful to the individuals involved. Personal information, particularly sensitive information, will be reported and disclosed on a strictly 'need to know' basis, with systems and processes that support the privacy and security of information and respect for the affected people.

6.2 Disclosure Requirements

Disclosure considerations must be a key component in the response to, and management of, all critical and serious client incidents.

A disclosure assessment must be undertaken for all designated critical client incidents. Disclosure is most likely to be relevant when the incident relates to allegations of abuse or neglect of a client by a worker or other party.

In many critical client incidents, there is no case for disclosure, for example, when there are no other likely victims, i.e. a client has been harmed in a one-off accident). However, a brief initial disclosure assessment must still be undertaken and recorded.

Disclosure will only be undertaken when there are compelling reasons for doing so; when harm, or potential harm, is significant; and where there are no legal or procedural prohibitions or restrictions. Disclosure must not impede or hinder any criminal investigations.

Disclosure assessments and decisions must take into account:

- the nature, quality and reliability of the evidence/information;
- the likelihood that there have been other victims, and that others have been significantly affected or harmed;
- the potential for others still to be at risk of significant harm or to require assistance to alleviate the effects of such harm;
- the nature of the harm or risk and its severity;
- the vulnerability of those affected;
- what clients, their guardians, next of kin and the community may reasonably expect in such a circumstance;
- the risks in disclosing, and not disclosing, information;
- the legal status of the matter, including legal obligations, prohibitions and risks;
- consent requirements and obligations (relating to the use and disclosure of personal information);
- DHS responsibilities in the matter and the responsibilities of other agencies or bodies (for example, for case management, guardianship);
- any alternative or complementary strategies to disclosure (for example, collecting more evidence, monitoring the wellbeing of clients for signs of distress, other strategies to reduce or manage risk, consultation with funded service providers, disclosing of limited information only);
- who should be consulted or advised before disclosure takes place; and
- Exactly what information will be provided, to whom, for what purpose and with what justification, and how (Critical Client Incident Disclosure Assessment Action Plan).

In some circumstances, decisions in relation to disclosure will need to be made urgently or out of hours. Therefore, strategies must be put in place to ensure the processes and requirements of this policy are adhered to.

This may include convening a high-level disclosure assessment meeting, seeking the required advice, developing a plan, consulting with South Australia Police (SAPOL), the department's Director, Incident Management Unit, Executive Director, Performance and People, and Chief Executive.

Processes, consultation and decisions must also be documented, and records maintained.

Refer to the Critical Client Incident Disclosure Assessment Procedure and Disclosure Assessment Action Plan.

6.3 Consultation and Advice

Disclosure decisions must always be made in consultation and never in isolation.

- If the initial assessment indicates that disclosure may be warranted, the Critical Client Incident Manager, or designated responsible Manager/Director and Director, Incident Management Unit, must convene a Disclosure Assessment Meeting of key stakeholders to undertake a structured assessment and develop a plan and recommendations. This meeting should include senior departmental and other stakeholders with expert knowledge and relevant responsibilities, for example, the Case Manager, the Incident Management Unit Misconduct or Investigations team. Legal advice must be sought when there is likelihood that disclosure may be recommended.
- In matters where there is police involvement (for example, an ongoing investigation, charges, or a matter is before the Courts), disclosure must not take place without appropriate consultation with SAPOL.
- Consultation may also need to take place with other stakeholders, including departmental Insurance Services, funded service providers, other government departments and where relevant, appropriate cultural sensitivities (eg Aboriginal and Torrens Strait Islanders) people.
- These consultations must be documented and will inform the final disclosure plan and determination on disclosure.
- Recommendations of the Disclosure Assessment Meeting must be provided to the Director, Incident Management Unit for review. If disclosure is recommended and supported by the Director, Incident Management Unit and the Executive Director, People and Performance, the Chief Executive must be briefed and provide formal approval.
- When disclosure is determined as warranted, a written briefing must be provided to the Minister outlining the reasons for the decision and the Disclosure Assessment Action Plan. This can be included as a part of the Critical Client Incident Minister Briefing.

6.4 Disclosure Options

Once a decision to disclose has been made, there will generally be four options available:

- request a third party, such as a funded service provider, to disclose information to relevant persons;

- compel a third party, such as a funded service provider, to disclose information to relevant persons;
- disclose information directly; or
- Determine that there are other legitimate ways for information to be sufficiently and responsibly disseminated (for example, through a SAPOL investigation).

Refer to Critical Client Incident Disclosure Assessment Guideline for further details.

Disclosure is not a one-off process. Executive Directors, Critical Client Incident Managers and other key stakeholders within the department, should remain mindful of disclosure issues throughout the life of an incident/investigation.

Decisions may need to be reviewed or re-assessed when circumstances change, for example, if an individual is arrested and charged, or committed to trial, or if new information emerges.

6.5 Roles and Responsibilities

The Chief Executive is responsible for:

- ensuring a culture where critical client incidents are dealt with seriously and thoroughly, including considerations of disclosure; and
- ensuring effective systems and processes are in place across the department in relation to disclosure.

Executive Director, People and Performance is responsible for:

- ensuring DHS meets its legal and other obligations in relation to disclosure;
- liaising with the Director, Incident Management Unit regarding disclosure issues; and
- reviewing Disclosure Assessment Action Plans and recommendations and providing advice to the Chief Executive when it is determined disclosure is warranted.

Director, Incident Management Unit is responsible for:

- liaising at a senior level to resolve disclosure issues;
- In conjunction with the Executive Director, People and Performance, providing advice to the Chief Executive when disclosure is recommended.;
- in consultation with the Critical Client Incident Manager and relevant Executive Director, determining if a full disclosure assessment is required and if so, ensuring a Disclosure Assessment Meeting is convened;
- seeking additional advice, and/or liaising at a senior level across government and with funded service providers or other stakeholders, as required;
- ensuring all relevant evidence and advice has been sought, included and thoroughly considered;
- providing advice and support to staff across the department, including the Chief Executive, and Executives, in relation to this policy;
- developing relevant procedures, resources and systems, and reviewing them accordingly.
- maintaining a central register of incidents in which disclosure occurs;
- reviewing ongoing development of the policy, procedures and associated systems; and providing summary reports and briefings to the Chief Executive

Executive Directors are responsible for:

- ensuring their Divisions are compliant with this policy; and
- ensuring decisions and actions are thoroughly documented, and records are created and maintained in accordance with the State Records Act 1997.

Critical Client Incident Managers are responsible for:

- in conjunction with the Director Incident Management Unit, undertaking an initial disclosure assessment for all critical client incidents
- implementing and monitoring approved Critical Client Incident Disclosure Assessment Action Plans.
- establishing and maintaining high quality official records in relation to disclosure assessments, meetings, decisions and practice;
- preparing all required briefings and documentation; and
- remaining mindful of disclosure issues throughout the life of an incident/investigation and reviewing decisions should circumstances change or new evidence emerges.

7. Risk

Without a consistent, defensible, rigorous and transparent approach to disclosure, DHS risks causing or compounding harm to clients, alleged perpetrators and others in the community; litigation; loss of reputation and community confidence; financial loss and consumer dissatisfaction. This may occur through disclosing information inappropriately or illegally; disclosing information that is misleading, untested, inaccurate or false; or not disclosing information when it was reasonable to do so.

8. Reference Documents**8.1 Directive documents**

- *Evidence Act 1929*
- *Young Offenders Act 1993*
- *Disability Services Act 1993*
- *Child Safety (Prohibited Persons) Act 2016*
- Child Safety (Prohibited Persons) Regulations 2019
- *Children and Young People (Safety) Act 2017*
- *State Records Act 1997*
- *National Disability Insurance Scheme Act 2013*
- *Guardianship and Administration Act 1993*
- *Mental Health Act 2009*
- *Youth Justice Administration Act 2016*
- *Supported Residential Facilities Act 1992*
- Master and Service Agreements between DHS and funded service providers
- Cabinet Administrative Instruction 89/1 (Information Privacy Principles)
- Information Sharing Guidelines for Promoting Safety and Wellbeing

8.2 Supporting documents

- Critical Client Incident Disclosure Assessment Procedure
- Critical Client Incident Disclosure Assessment Action Plan Template


8.3 Related documents and resources

- Appendix to Information Sharing Guidelines for Promoting Safety and Wellbeing
- Information Sharing Guidelines Policy
- Critical Client Incidents Policy
- Royal Commission 2012-13, Report of Independent Education Inquiry (Debelle Report) 2013
- South Australian Family Safety Framework

9. Aboriginal Impact Statement Declaration

The needs and interests of Aboriginal people have been considered in the development of the policy, and there is no specific direct or indirect impact on Aboriginal people.

10. Policy Approval

<p>Content Author:</p> <p>Incident Management Unit</p>	<p>Stewart Dodd Director Incident Management Unit</p> <p>22 / 3 / 2021</p>	<p>Sue-Ann Charlton Executive Director, People and Performance</p> <p>31 / 3 / 2021</p>
<p>Comments:</p>	<p style="text-align: center;">APPROVED</p> <p style="text-align: center;"></p> <p style="text-align: center;">Lois Boswell Chief Executive</p> <p style="text-align: center;">6 / 4 / 2021</p>	