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| Client incident management guideAddendum: Out-of-home careJanuary 2020 |

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## Introduction

### Purpose

The *Client incident management guide addendum: out-of-home care* provides specific guidance to support the policies and procedures outlined in the Client incident management guide for allegations of abuse by carers (home based care - foster care and kinship care, residential care and lead tenant) of children living in out-of-home care (OOHC). It should be read in conjunction with the Client incident management guide.

While allegations of abuse by out-of-home care carers are reportable as incidents under the Client incident management guide, this addendum provides additional guidance for the management of such incidents in out-of-home care services. It distinguishes between the following key processes:

* case planning – child protection retains responsibility for leading case planning
* incident management – service providers retain responsibility for the management and any subsequent investigation or review processes.

An ‘incident’ is defined under the Client incident management guide as **an event or circumstance that occurred during service delivery and resulted in harm to a client**or has the potential to harm a client (see Chapter 3 of the Client incident management guide). In the Client incident management guide, ‘abuse’ may include physical, sexual, financial or emotional/psychological abuse or neglect, as defined in the Client incident management guide, Appendix A.

The Client incident management guide is able to address allegations of child-to-child violence in out-of-home care, where the victim is a client, so this has not been covered in this addendum. However, the Client incident management guide does not provide specific guidance on the responses to allegations of child-to-child violence where the client is the perpetrator and the victim is not a client, or allegations about client-to-staff incidents unless there is an identified impact on the client.

### Out-of-home care in Victoria

Each year in Victoria, a number of children and young people spend time living away from their families in a statutory out-of-home care placement. These children and young people are amongst the most vulnerable client cohorts, and special consideration needs to be given to their safety and security while they are in the care of the Department of Health and Human Services (the department).

There are four out-of-home care types, as defined below:

* **Home based care - kinship care** – where relatives or members of a child or young person’s social network are approved to provide accommodation and care to children or young people who require out-of-home care due to abuse or neglect.
* **Home based care - foster care** – placements for children and young people unable to live with their families due to issues of abuse or neglect. Approved volunteer carers look after children and young people in their own home.
* **Residential care** – out-of-home care provided by employed staff in a residential facility for children and young people where it has been determined by the department that living at home is not consistent with their best interests, due to the risk of abuse and neglect. Residential care includes Secure Welfare services.
* **Lead tenant** – the provision of semi-independent accommodation and support for young people 15 to 18 years who are unable to live with their family due to issues of abuse or neglect and are in transition to independent living. A volunteer lead tenant lives with a small group of young people and provides them with support and guidance in developing their independent living skills.

Children or young people in placements awaiting finalisation of a permanent care order are considered to be within the scope of a home based care (foster care or kinship care) placement.

### Understanding children and young people in out-of-home care

When undertaking investigations or reviews of client incidents in out-of-home care, there are a number of considerations that must be taken into account which may impact on the child’s or young person’s ability to disclose incidents or to participate in an investigation or review processes.

When considering this cohort of clients, it is critical that consideration should be given to the child or young person’s:

* age
* stage of development
* social background (social skills)
* social isolation (many children in out-of-home care have limited family or community connections)
* motor skills (strength and improved fine motor skills)
* emotional maturity (in understanding and managing emotional states)
* gender (development of a gender identity)
* cognitive ability (mental abilities)
* language (English as an additional language), and
* cultural background

Children living in out-of-home care may exhibit behaviours of concern, or have cognitive, communication or physical impairments that impact on their ability to disclose incidents or to contribute to incident investigations or reviews. All children who reside in out-of-home care come from backgrounds of abuse and trauma.

Interviews can be intimidating experiences. It is critical that interviews are conducted in a way that minimises the anxiety for the child or young person. It is also critical that the evidence collected from children or young people is as robust as possible; it needs to be as detailed as possible and recorded appropriately.

For this purpose, interviews should be conducted by staff who have experience in interviewing children; consideration should be given to matching the gender of the interviewer with the child, particularly with respect to interviewing a child about allegations of sexual abuse; a child should always have a support person present at the interview and all efforts should be made to minimise the number of times a child has to be interviewed regarding the incident.

Good practice indicates there is a need to minimise the number of people directly involved in interviewing children and young people. It is recommended that no more than two people are involved with the interview of any child or young person.

The child or young person should always be encouraged to have a key support person attend the interview noting this person should have no direct involvement in the incident being investigated or reviewed. A key support person is independent of the service being provided and may include a parent or family member, a significant other, a guardian appointed by the Victorian Civil and Administrative Tribunal, or an advocate. Section 2.2.3 of the *Client incident management guide* provides additional information on contacting a key support person.

The decision whether to interview the child will depend on the child or young person’s age and maturity. Regardless of the child or young person’s age or maturity, it is important to conduct interviews with children sensitively.

This addendum provides guidance to respond appropriately to incidents involving children or young people living in out-of-home care.

### Context

#### Children, Youth and Families Act 2005

The Children, Youth and Families Act 2005 came into effect in Victoria in April 2007. The policy objectives supported by the Children, Youth and Families Act include:

* promoting children’s best interests, including a new focus on children’s development
* supporting a more integrated system of effective and accessible child and family services, with a focus on prevention and early intervention
* improving outcomes for children and young people in the child protection and out-of-home care service system.

#### Best interests principles

The Children, Youth and Families Act highlights that the best interests of the child are paramount. In determining whether a decision or action is in the best interests of the child, the department, department-funded organisations, and other relevant bodies, must take into account the principles outlined in s. 10 of the Children, Youth and Families Act, including:

* the need to protect the child from harm
* protection of the child’s rights
* promotion of the child’s development.

Other principles expressly recognised are the importance of the family unit and the need to preserve the relationships within it; recognition of the unique needs of Aboriginal children to maintain and promote their cultural identity; and the child’s wishes.

The best interests principles in the Children, Youth and Families Act require a focus on children’s safety, stability and development, in the context of their age and stage of life and their culture and gender. These principles support a broader goal for all children that every child can thrive, learn and grow and be respected and valued to become an effective adult. All decisions about children or young people must consider the best interests principles. It is important to ensure that, where possible, the child or young person has the opportunity to participate in any investigation or review process resulting from a client incident.

#### Aboriginal Child Placement Principle

The Aboriginal Child Placement Principle is a nationally agreed standard in determining placement of Aboriginal children in out-of-home care. The principle aims to enhance and preserve Aboriginal children’s cultural identity by ensuring that they maintain strong connections with family, community and culture. The principle governs the practice of child protection practitioners and community services when placing Aboriginal children and young people in out-of-home care. The principle is enshrined in the Children, Youth and Families Act.

#### *Child Wellbeing and Safety Act 2005*

The Child Wellbeing and Safety Act 2005 is a companion piece of legislation to the Children, Youth and Families Act and have the following purposes:

* To provide common principles for those child and family services provided to vulnerable children and families under the Children, Youth and Families Act and other primary and universal services provided to children and families under other legislation, such as child care and maternal and child health services. These principles should be used for guidance in the development and provision of government and community services for children.
* To provide for the establishment of bodies to oversee the child and family service system and to coordinate government policy in this area:
* Victorian Children’s Council to provide independent and expert advice to the Premier and relevant Minister for Families and Children relating to policies and services that enhance the health, wellbeing, development and safety of children.
* Children’s Services Coordination Board consisting of relevant departmental secretaries and the Chief Commissioner of Police to report on the outcomes of government actions in relation to children, especially vulnerable children and to monitor arrangements to coordinate government actions relating to children at local and divisional levels.
* To establish the mandatory Child Safe Standards and the Commission’s roles and responsibilities in supporting, overseeing and enforcing compliance with those standards.
* To establish the reportable conduct scheme and the identification of the Commission as the body responsible for administering, overseeing and monitoring the scheme.

#### Charter for children in out-of-home care

The Children, Youth and Families Act requires that there is a charter for children and young people in care in Victoria, that provides a framework for promoting the wellbeing of these children (s. 16(1)(f)).

The *Charter for children in out-of-home care* provides a clear and simple statement about the rights that Victorian children and young people can expect to be upheld throughout their time in care. Table 1 lists the rights as contained in the charter. It is the role of the department and department-funded organisations to ensure these rights are upheld for children and young people in out-of-home care when managing quality-of-care concerns.

Table 1: Charter for children in out-of-home care

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| --- |
| As a child or young person in care I need:* to be safe and feel safe
* to stay healthy and well and go to a doctor, dentist or other professional for help when I need to
* to be allowed to be a child and be treated with respect
* if I am an Aboriginal child, to feel proud and strong in my own culture
* to have a say and be heard
* to be provided with information
* to tell someone if I am unhappy
* to know information about me will only be shared in order to help people look after me
* to have a worker who is there for me
* to keep in contact with my family, friends and people and places that matter to me
* careful thought being given to where I will live so I will have a home that feels like a home
* to have fun and do activities that I enjoy
* to be able to take part in family traditions and be able to learn about and be involved with cultural and religious groups that are important to me
* to be provided with the best possible education and training
* to be able to develop life skills and grow up to become the best person I can
* help in preparing myself to leave care and support after I leave care.
 |

Source: Department of Human Services 2007, *Charter for children in out-of-home care*, Melbourne.

For more information on the *Charter for children in out-of-home care* refer to the [Commission for Children and Young People website](https://ccyp.vic.gov.au/) at <https://ccyp.vic.gov.au/>.

#### Commission for Children and Young People

The Commission for Children and Young People has a particular interest in the safety and protection of children. The Commission for Children and Young People is an independent body; its objective being to promote continuous improvement and innovation in:

* policies and practices relating to the safety and wellbeing of
	+ vulnerable children and young persons
	+ children and young person’s generally
* the provision of out-of-home care services for children.

Under the Commission for Children and Young People Act 2012 (s. 8), the functions of the Commission for Children and Young People include (but are not limited to):

* providing advice to ministers, government departments, health services and human services about policies, practices and the provision of services relating to the safety or wellbeing of vulnerable children and young persons
* promoting the interests of vulnerable children and young persons in the Victorian community
* monitoring and reporting to ministers on the implementation and effectiveness of strategies relating to the safety or wellbeing of vulnerable children and young persons
* providing advice and recommendations to the minister about child safety issues, at the request of the minister
* promoting child-friendly and child-safe practices in the Victorian community.

The Commission for Children and Young People Act also states that the Commission for Children and Young People must:

* act independently and impartially in performing its functions.
* when performing a function in relation to a vulnerable child or young person, perform the function for the purpose of promoting the best interests of the child or person.

The Commission for Children and Young People's function of monitoring the out-of-home care service system involves the encouragement, and promotion, of continuous improvement and reflective practice within the system in order to achieve optimum service delivery for this highly vulnerable group of children and young people.

The Commission for Children and Young People will have a role, along with other stakeholders, in monitoring the implementation and effectiveness of these guidelines.

The *Memorandum of Understanding – Commission for Children and Young People and Department of Health and Human Services* outlines the requirements to provide client incident information to the Commission for Children and Young People.

#### Reportable Conduct Scheme

To improve oversight of how organisations respond to allegations of child abuse and child-related misconduct, the Reportable Conduct Scheme commenced on 1 July 2017. Since this time, allegations of reportable conduct must be notified to the Commission for Children and Young People by [relevant in-scope organisations](https://ccyp.vic.gov.au/reportable-conduct-scheme/for-organisations/#TOC-5) (refer to section 8

Reportable Conduct Scheme for more information).

#### Child Safe Standards

Victoria has introduced compulsory minimum standards for organisations that provide services for children to help protect children from abuse. The Child Safe Standards form part of the Victorian Government’s response to the Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations (2013) (Betrayal of Trust Inquiry).

On 1 January 2017, the Commission for Children and Young People became the oversight body for the Child Safe Standards.

See the [Commission for Children and Young People website](https://ccyp.vic.gov.au/) at <https://ccyp.vic.gov.au/> for more details.

## Overview of roles and responsibilities

The Client incident management guide outlines that service providers are responsible for reporting, reviewing or investigating alleged client incidents. There are a range of circumstances in out-of-home care where the department is the service provider, including for a large number of kinship care placements. A number of organisations receive funding from the department to provide out-of-home care services. The term ‘service provider’ used in this addendum refers to both internally and externally delivered service providers.

The department plays a key role in monitoring and overseeing incidents, including endorsing client incident reports. References to the department in this addendum refer to the department’s monitoring and oversight role.

### Service provider

The service provider, whether the department or a department-funded organisation, is responsible for the management of any client incident relating to a child or young person in-out-of-home care and will be responsible for any resulting incident investigation or review.

Where the client receiving services from one provider discloses an incident that occurred in the care of a second provider, the service provider who is responsible for completing the incident report is also responsible for discharging the other obligations in regards to incident investigation or review unless, by mutual agreement of the service providers, a more appropriate service or service provider takes over this responsibility (refer to section 3.7 *Client incident management guide* for additional information).

In exceptional circumstance, the department may jointly manage the investigation or review of a major impact incident.

### Child protection

The role of the child protection is outlined in this addendum. In summary, throughout the process to manage a client incident, **child protection retains statutory responsibility for case planning and placement decisions for children in out-of-home care**. This means that authorised child protection staff may remove a child from a placement at any point, where it is in the child’s best interests. Child protection is also informed or consulted at key points during an investigation or review of a client incident, as described further in section 3.

### Aboriginal Child Specialist Advice and Support Service

Where the child or young person is of Aboriginal or Torres Strait Islander background, the investigation manager should discuss the requirement to consult the relevant Aboriginal Child Specialist Advice and Support Service (ACSASS) during the investigation process, unless the child or young person has been authorised to an Aboriginal agency under s. 18 of the Children, Youth and Families Act, in which case the procedures described in this section apply. Child protection will retain responsibility for consulting with ACSASS as required (refer section 6 for further information).

A key role of the ACSASS worker is to assist in identifying members of the child's kinship or community network who may be suitable to provide a placement. The decision to place an Aboriginal child in out-of-home care must be in accordance with the Aboriginal Child Placement Principle.

In Victoria, the ACSASS service is delivered by the Victorian Aboriginal Child Care Agency (VACCA) in all locations with the exception of the Mallee area where the ACSASS service is delivered by Mallee District Aboriginal Services (MDAS). The ACSASS service delivered by VACCA is also referred to as 'Lakidjeka' and in the Mallee it is sometimes referred to as 'MDAS/ACSASS'.

Where an Aboriginal child is placed with a non-Aboriginal carer, consultation with the local Aboriginal community-controlled organisation (ACCO) or a respected community member must occur. Child protection will retain responsibility for consultation with the local ACCO as required.

### Aboriginal agency with responsibility for authorised clients

The Client incident management guide applies to Aboriginal agencies delivering services for Aboriginal clients subject to authorisation under s. 18 of the Children, Youth and Families Act. Aboriginal agency staff must comply with the client incident reporting and management as outlined in the Client incident management guide.

An authorised client is defined as an Aboriginal child on a protection order issued by the Children's Court authorised under s. 18 of the Children, Youth and Families Act to the principal officer of an Aboriginal agency.

Incidents may occur when a client is in the direct care of an Aboriginal agency or while in the care of another department-funded organisation providing care for a child.

If an incident occurs while an authorised client is in the care of an Aboriginal agency, the Aboriginal agency must comply with the *Client incident management guide*.

If an incident occurs while an authorised client is in the care of a funded organisation, the organisation will be responsible for the reporting and management of the incident. However, the department-funded organisation must advise the Aboriginal agency of the incident.

The Client incident management guide describes the responsibility of the Aboriginal agency and the department-funded organisation regarding the response to the incident, including requirements for investigation and review.

Powers and functions in relation to quality-of-care concerns remain with the Secretary, Department of Health and Human Services (the Secretary) regardless of authorisation under s. 18 of the Children, Youth and Families Act.

Aboriginal agencies must comply with requests from divisional offices for additional information regarding the follow-up actions taken by the agency in response to major impact client incidents. This is to enable the Secretary to fulfil their responsibilities in the administration of the Aboriginal agency as a funded agency. This is separate to the responsibility of the Aboriginal agency in its administration of the powers and functions under the Children, Youth and Families Act for children on a protection order.

The Aboriginal agency holds case planning responsibility for the child, so in cases where a funded organisation is responsible for an investigation or review, the funded organisation must consult with the Aboriginal agency regarding:

* the immediate safety and wellbeing needs of the client, including consideration of placement change
* client interviews
* decisions regarding the ongoing suitability of a placement.

The process for investigation or review of a client incident for an authorised Aboriginal client is described in Figure 1.

Figure 1: Application of the Client incident management guide to Aboriginal children in Aboriginal care



### Disability services

Where a client is accessing both out-of-home care and disability support services, both child protection and the disability case manager (where involved) are required to be consulted in the process of investigating incidents. In such cases, the service provider responsible for the 24-hour care of the client (most likely the out-of-home care provider) takes lead responsibility for incident investigation.

### The department as funder and regulator

The service provider is required to submit client incident information to the department for quality assurance and endorsement. This role will be undertaken by monitoring and oversight staff within the divisional office not by staff in service delivery roles.

## Child protection involvement in the management of client incidents

**The service provider must consult with child protection** **during the incident management process (at a minimum),** at the following points during the process:

* **Identification and response**Service providers must immediately inform the relevant child protection area manager of any alleged incident so that child protection is able to consider the immediate safety of the child, including any decisions regarding the ongoing appropriateness of the placement.
* **Reporting**
Child protection will be provided with a copy of the final client incident report immediately following endorsement by the divisional office. A copy of the incident report will be provided by the divisional office monitoring and oversight staff.
* **Follow up recommendation**When an incident alleging abuse, poor quality of care or unexplained injury is reported as a major impact incident, service providers are required to complete an appropriate investigation action. During this phase, service providers **must** consult with the relevant child protection area manager as part of the process of determining an appropriate way forward.

While ultimately the outcome of the investigation action is determined by the service provider, if child protection does not agree with the proposed action, it is expected that the service provider notes this disagreement and rationale for proceeding with the proposed course of action to investigate or review.

* **Incident investigation**
Service providers **must** inform the relevant child protection area manager of the progress of any investigation involving a child in the care of the department to ensure due consideration is given to the impact of the investigation may have on the child or young person and any requirement to reassess the immediate safety of the child, including any decisions regarding the ongoing appropriateness of the placement.
* **Incident review**Service providers **must** inform the relevant child protection area manager of any intention to interview a child or young person as part of an incident review (case review or root cause analysis review) to ensure due consideration is given to the impact such an interview may have on the child or young person.

Child protection’s role in the client incident management process involving a child in out-of-home care is shown in Figure 2.

Figure 2: Child protection’s role in the client incident management process



\*Note indent investigation and review are only required for major impact incidents.

\*The response to incident reporting (see second box on bottom line above) outlines that the service provider is to share the incident report with child protection. For major impact incidents, this will happen automatically as all major impact incident reports that involve child protection clients must be forwarded to the relevant child protection director as an authorised recipient.

## Identifying client incidents in out-of-home care

After ensuring that a child or young person is safe and their immediate needs have been met, appropriate incident management starts with the correct identification and classification of each client incident. Appendix A of the Client incident management guide provides guidance on the classification of incidents as either a major impact or non-major impact incident.

Some children and young people in out-of-home care have a limited ability to disclose incidents. As such, for children living in out-of-home care, an increased responsibility is placed on others to identify and report incidents under the Client incident management guide. This may include caseworkers, carers or other people associated with children or young people living in out-of-home care.

These people should be aware of possible instances where there may have been incidents involving carers and children or young people in out-of-home care including, but not limited to:

* the child or young person verbally disclosing that an incident, or incidents, have occurred
* a notable change in behaviour from the child or young person; for example, becoming withdrawn, acting out, crying, violent or harmful behaviours towards others and mood swings
* physical signs of possible abuse or neglect, such as bruising, scratches or broken bones
* the child or young person wearing unwashed or unkempt clothing, or the same clothing repeatedly
* the child or young person making repeated remarks about hunger and food, or where there are concerns about the nutritional quality of the food being provided
* concerns about the child or young person’s hygiene
* the lack of medical or dental attention being received by a child or young person
* the cultural needs of the child or young person not being adequately supported by their carer.

Service providers must use their professional judgement when considering whether there are signs of cumulative harm. These may include repeat or multiple incidents that have individually been reported as non-major impact incidents, which due to their chronic or repeat nature, need further consideration as to whether they might amount to a major impact incident.

Where a staff member of a service provider is uncertain whether there are indicators of possible abuse or poor quality of care, they should seek further guidance from their manager in the first instance or discuss further with child protection case workers or relevant contacts at the department.

## Carer Development Plans

### Carer Development Plans

In the out-of-home care sector, service providers should formalise Client incident management guide monitoring and support processes for carers through the introduction of a carer development plan (available at the [client incident management system webpage](https://providers.dhhs.vic.gov.au/cims) at <https://providers.dhhs.vic.gov.au/cims>).

These plans seek to formalise oversight for service providers and actions for carers to improve the quality of care being provided. These replace the formal care reviews previously used under the department’s Guidelines for responding to quality of care concerns in out-of-home care (replaced by the Client incident management guide).

Carer development plans address significant or repeated concerns about carers in out-of-home care. Carer development plans are intended to be less onerous and disruptive than investigations, with a focus on promoting practice improvement by carers. They are action-oriented and support the development of strategies to overcome rising concerns and are developed in collaboration with carers.

Carer development plans may be in place for up to six months from development, with initial reviews within 28 business days and at three months from commencement. These reviews are led by the service provider, in collaboration with the relevant carer.

Carer development plans can be used in the following instances:[[1]](#footnote-1)

1. **Following an investigation of a major impact incident, to promote practice improvement** Where an incident investigation does not substantiate abuse by a carer, but identifies further action is required or opportunities for carers to improve their practices.
2. **Following a final review of a major impact incident**

If during the process of an incident review, issues are identified about the actions or role of the carer.

1. **Following a series of non-major impact incidents reported about one carer**Service providers may determine that a series or repeated incidents involving one carer identify opportunities for carers to improve their practices, a Carer Development Plan may be introduced and implemented.

### Parties to the carer development plan

The development, implementation and monitoring of carer development plans is a collaborative exercise, with the service provider playing the lead role. The service provider may choose to involve additional parties at their discretion. Additional participants may include:

* child protection
* ACSASS, if the child is from an Aboriginal or Torres Strait Islander background
* additional specialists or representatives considered of value by the service provider.

The service provider must give a copy of the carer development plan to the carer for their records when it is complete. A copy of the completed carer development plan must also be placed on the carer file.

### Contents of a carer development plan

Carer development plans must include the following:

* a summary of the incident(s) that led to the decision to prepare a carer development plan
* clearly articulated objectives and measures of success
* actions to be taken by the carer to reduce future risks, with realistic timelines for implementation
* actions to be taken by the service provider to support the carer in meeting their obligations set out in the carer development plan including the provision of additional support mechanisms
* a clearly articulated timeframe for review of carer development plan actions and objectives
* clearly articulated steps to be taken to improve the quality of care provided by the carer.

### Supporting the implementation of carer development plans

Carer development plans can be used as a formal support mechanism to support both service providers and carers in ensuring better care for children and young people.

The service provider has lead responsibility for ensuring the carer follows his or her plan, and that appropriate support to meet objectives is provided. Carer development plans should be reviewed as follows (at a minimum):

* initial review to identify areas for further support – 28 working days from commencement
* comprehensive review against desired outcomes – three months from commencement
* final review for carer completion – six months from commencement (maximum).

Following the final review, if improvement has not been observed in the quality of care provided by the carer, the service provider determine the ongoing suitability of the carer to provide care for children and young people. If a child or young person is in placement with the carer at this time, the child protection area manager **must** be informed of any ongoing concerns about the carer to inform an assessment of the ongoing suitability of the placement for the child or young person.

### Provision of the carer development plan to other parties

If a carer has a child placed in their care at the time of the commencement or finalisation of the carer development plan, a copy of Part C: Action Plan of the carer development plan (available at the [client incident management system webpage](https://providers.dhhs.vic.gov.au/cims) at <https://providers.dhhs.vic.gov.au/cims>) should be provided to the relevant child protection area manager for the purpose of assessment of the ongoing appropriateness of the placement.

At the time of developing the plan, the carer should be informed that child protection will be provided with a copy of Part C of the carer development plan for this purpose. Service providers must provide progress reviews to the relevant child protection area manager every three months at minimum, in these cases.

In these instances, a copy of Part C of the carer development plan should be placed on the client’s CRIS file and marked as confidential in the subject line to ensure that access to the information is only available to those staff required to access it to support the child in placement. Child protection should not share the Part C of the carer development plan with any other party without the agreement of the service provider. Should a decision be made to share the Part C of the carer development plan with other parties, the carer should be informed of this decision and the rationale for distribution.

The carer development plan does not require child protection’s endorsement.

### Interface with performance management process for paid employees

The carer development plan does not replace existing processes to manage performance or alleged misconduct of carers. Any allegation of misconduct will continue to be managed through existing service provider human resources policies.

## Allegations involving Aboriginal or Torres Strait Islander children

### Overview of response

In the event the alleged victim is an Aboriginal or Torres Strait Islander child or young person living in out-of-home care, the relevant ACSASS must be consulted, unless the alleged victim is authorised to an Aboriginal agency under s. 18 of the Children, Youth and Families Act, in which case consultation must occur with the authorised Aboriginal agency. See section 2.3 Aboriginal Child Specialist Advice and Support Service for procedures for children and young people authorised under s. 18 of the Children, Youth and Families Act.

Service providers leading investigations of incidents involving an Aboriginal or Torres Strait Islander child or young person must respond in a culturally respectful and appropriate manner. This response should acknowledge that there may be cultural differences in practices, such as child-rearing. Differences in practices must be considered in a cultural context when making decisions regarding incident management. A culturally respectful approach also acknowledges the impact of Stolen Generations and past practices by welfare agencies on Aboriginal and Torres Strait Islander people, families and communities.

It is important to remember that in some circumstances, Aboriginal or Torres Strait Islander workers (and carers) themselves come from the same community as their clients and may also have experienced aspects of trans-generational trauma. This is an essential consideration when planning a culturally sensitive approach to alleged incidents and also when thinking about the potential impact of such matters upon Aboriginal workers, Aboriginal carers and engagement with the child or young person’s birth family.

The mere presence of service providers entering the home of carers following a reported incident may trigger an emotional response that could feel painful for Aboriginal and Torres Strait Islander people, including the child or young person involved. This may be particularly relevant to kinship carers, who may be in challenging or vulnerable positions and may not be closely linked to a department-funded organisation or support services.

The sensitivity and skill of the practitioners involved and the strength of the partnership between service providers and ACSASS, along with any relevant ACCO or respected community members, is important to help promote an appropriate response.

### Steps

To support responses to alleged incidents involving Aboriginal and Torres Strait Islander children living in out-of-home care, the following is required:

* **Identification and response**Service providers **must** inform ACSASS of any incident involving an Aboriginal or Torres Strait Islander child in out-of-home care.
* **Reporting**Service providers **must** share a copy of the final incident report with ACSASS immediately following endorsement by the department.
* **Reviewing**When an incident alleging abuse, poor quality of care or unexplained injury is reported as a major impact incident, service providers are responsible for determining the appropriate course of action. During this phase, child protection will retain responsibility for consultation with ACSASS as part of the process of determining an appropriate way forward.
* **Incident investigation
Child protection will retain responsibility for** keep ACSASS regularly informed about the progress of any *c*lient incident investigation involving an Aboriginal or Torres Strait Islander child or young person in out-of-home care.

If a child or young person is placed with a non-Aboriginal carer, consultation with the local ACCO or a respected community member must occur, in addition to ACSASS.

### Interview considerations for Aboriginal and Torres Strait Islander children and young people

Interviews with Aboriginal and Torres Strait Islander children and young people regarding possible abuse or neglect in an out-of-home care placement, where possible, should be undertaken jointly by the service provider and ACSASS.

It is essential that interviews of Aboriginal or Torres Strait Islander carers are planned and conducted in a culturally appropriate and sensitive manner, taking account of issues outlined above. In some cases, it may be appropriate to conduct interviews outside the carer’s family home to ensure the carer’s privacy is respected.

It is important that carers are given the opportunity to have an Aboriginal or Torres Strait Islander organisation or community member support them through interview processes, especially if there is no Aboriginal or Torres Strait Islander placement agency involved (this is particularly relevant for kinship carers).

## Addressing historical allegations

This section should be read in conjunction with the Client incident management guide, section 3.2.2: Historical disclosures. It provides additional information regarding the application of the Client incident management guide in out-of-home care settings.

### Defining historical allegations in out-of-home care settings

An allegation is considered to be historical in the out-of-home care setting if any of the following criteria are met:

* The child is no longer a client of the service provider in relation to which the alleged incident occurred.
* The carer is no longer a carer at the service provider in relation to which the alleged incident occurred.
* The child is no longer placed with the carer (including in circumstances where both parties are still with the same service provider) and the allegation occurred more than three years before the date the report is made.

If at the time of the disclosure the child is still placed with the same carer, this is not considered to be a historical allegation, irrespective of the timeframe in which it occurred. The Client incident management guide should be followed in these cases, with consideration for the additional guidance in this addendum.

Any allegations or incidents that occurred whilst a client was in the care of their parents, or prior to the child or young person becoming a client of the department, should be referred to child protection.

### Reporting and classifying historical allegations

The person to whom the historical allegation has been made must report the alleged incident in line with the Client incident management guide, section 3.1.2. Historical allegations are to be categorised using the criteria set out in the Client incident management guide, section 3.3.

If the incident alleges historical sexual or physical abuse or serious neglect, the reporter must contact Victoria Police in line with the Client incident management guide, section 2.2.2, and the Client incident management guide, Appendix B, where the allegation relates to alleged sexual or physical abuse.

Child protection **must** be consulted as part of the management of an historical allegation. If the client is a current child protection client, the relevant area manager must be advised upon identification of the alleged incident. If the client is no longer a client of the department, the divisional child protection director must be advised upon identification of the alleged incident.

### Roles and responsibilities for historical allegations

In circumstances where both the child and the carer remain supported by the same service provider, but the child is with a different carer, the service provider retains lead responsibility for investigating the incident.

In circumstances where the carer is no longer a carer at the relevant service provider, or the child is no longer a client at the relevant service provider, the divisional office will determine responsibility for leading the incident management process, negotiate with the relevant service provider and allocate the incident accordingly.

### Timelines for investigation of historical allegations

Historical allegations should generally be managed in the same way as other incidents of the same incident category and type. This extends to the need to retain appropriate timeframes for completion of investigations. The 28-working-day timeframe therefore applies.

In cases where former out-of-home care clients are no longer placed with the carer, and it is considered they are not in danger of further incidents, longer timeframes may be negotiated with the department. In these cases, the service provider must seek an appropriate timeframe extension from the divisional office, noting that management of these incident types may take longer due to the length of time between the alleged incident and the investigation.

The investigation manager is required to provide an update to the divisional office the end of each 28-working-day period regarding the progress of the investigation.

Service providers should be mindful of the requirement to notify the Commission for Children and Young People of any historical allegation that may meet the threshold for the Reportable Conduct Scheme and report accordingly.

## Reportable Conduct Scheme

The Reportable Conduct Scheme has been introduced to improve oversight of how organisations prevent and respond to allegations of child abuse.

The Reportable Conduct Scheme:

* identifies individuals who pose a risk to children, but do not have criminal records, and enabling them to be excluded from working with children
* provides independent oversight of responses to allegations of child abuse and child-related misconduct against workers and volunteers connected to organisations
* builds the capacity of organisations to respond appropriately and effectively to allegations of child abuse and child-related misconduct.

The Reportable Conduct Scheme requires certain organisations with a high level of responsibility for children to:

* ensure that the person in a relevant position of authority (such as the chief executive officer) in the organisation is made aware of and reports any allegation of reportable conduct made against a worker or volunteer to the Commission for Children and Young People. In all circumstances, allegations of criminal conduct must be reported to Victoria Police as the first priority.
* ensure appropriate investigation of the allegation. For example, for regulated organisations, the investigation may be undertaken by a government department or statutory body. For other organisations, the investigation may be in accordance with existing workplace investigation practices used to determine whether a worker should continue to be employed at the organisation.
* report any findings and the reasons for the outcome of an investigation to the Commission for Children and Young People at the conclusion of the investigation.

Since 1 July 2017, allegations of reportable conduct must be notified to the Commission for Children and Young People by [relevant in-scope organisations](https://ccyp.vic.gov.au/reportable-conduct-scheme/for-organisations/#TOC-5), including out-of-home care services. In addition, the Commission for Children and Young People provides oversight of investigations conducted under the Reportable Conduct Scheme and may share information with regulators, Victoria Police and the Working with Children Check Unit in the Department of Justice and Regulation.

More information about the scheme, including the types of organisations to which scheme applies and information regarding the scheme's phasing of the scheme, can be found the [Commission for Children and Young People website](https://ccyp.vic.gov.au/) at <https://ccyp.vic.gov.au/>.

## Carer registration

The Children, Youth and Families Act requires that organisations and other registered out-of-home care services:

* undertake a Disqualified Carer Check on all prospective out-of-home carers prior to approving the person as a foster carer or employing or engaging a person as a residential carer or a provider of services to children in the residential facility (s. 120)
* Register a carer in the Carer Register within 14 days of being approved as foster carer or employed or engaged as residential carer or provider of services (s. 78)
* Revoke a carer’s registration in the Carer Register within 14 days of ceasing to be a carer (s. 79).

The following types of carers must be registered:

* Foster carers – including any other staff who are engaged or employed to provide care to a child in a foster care placement.
* Residential carers (including Secure Welfare) – all staff including permanent, part-time, casual and temporary agency staff.
* Providers of services to children at an out-of-home care residential facility (for example, a tutor) who are engaged or employed by the out-of-home care service that manages the residence.

Kinship carers, permanent carers and adoptive carers are not subject to this requirement.

Failure to undertake a Disqualified Carer Check may result in a breach of the Children, Youth and Families Act (s. 120).

Further information can be found at the [Registration of out-of-home carers webpage](https://providers.dhhs.vic.gov.au/registration-out-home-carers) at <https://providers.dhhs.vic.gov.au/registration-out-home-carers>.

## Reports of abuse under section 81 and 82 of the Children, Youth and Families Act

### Overview

Allegations of the physical and/or sexual abuse against a registered out-of-home carer involving a child or young person in their care may be required to be reported to the Secretary for independent investigation under section 81 or 82 of the Children, Youth and Families Act. This is in addition to, and concurrent with, requirements under the *Client incident management guide*.

The Children, Youth and Families Act provides for disqualification of an out-of-home care carer where, following an independent investigation, the suitability panel determines physical or sexual abuse has occurred and the carer poses an unacceptable risk of harm to children.

The Children, Youth and Families Act requires that the Secretary determine whether there is a reasonable basis for conducting an independent investigation. Should the Secretary decide there is a reasonable basis, the Children, Youth and Families Act then compels the Secretary to refer the matter to an authorised investigator for an independent investigation to be undertaken.

If the independent investigator finds, on the balance of probabilities, that abuse has occurred, and the Secretary considers the person poses an unacceptable risk of harm to children, the Secretary will refer the matter to the suitability panel. The suitability panel determines whether or not the person should be disqualified.

This process occurs concurrently with the broader requirements under the *Client incident management guide*, and may be conducted on the same timeline as investigations mandated by the Client incident management guide. Service providers are required to take all possible steps to minimise duplication between investigations by ensuring any incident investigation is robust, well documented and can be presented to the independent investigator to support their own enquiries.

Note the processes described in this section are placed on hold where police investigations are undertaken.

### Reporting requirements

A section 81 or 82 report to the Secretary must be made by registered out-of-home care service providers when:

* there is an allegation of physical or sexual abuse
* the allegation of physical and/or sexual abuse is against a registered carer involving a child or young person placed in their care
* the abuse is alleged to have occurred on or after 7 December 2002.

A report to the Secretary must be made by an out-of-home care service provider as soon as possible and within seven days of becoming aware of an incident (section 81). If following an investigation, the service provider forms a reasonable belief that an abuse has occurred, a report must be made to the Secretary as soon as practicable (section 82).

A section 81 or 82 report must be made in addition to a client incident report and a notification of reportable conduct to the Commission for Children and Young People.

The section 81 or 82 report to the Secretary form can be found at the [department’s website](https://providers.dhhs.vic.gov.au) at <https://providers.dhhs.vic.gov.au/>.

For more information about notifications to the Commission for Children and Young People can be found at the [Commission for Children and Young People website](file:///%5C%5Cn171%5Cgroup%5CCommunity%20Services%20Branch%5CQuality%20%26%20Oversight%20Unit%5CCIMS%5CDeliverables%5COOHC%20addendum%5C%3Chttps%3A%5Cccyp.vic.gov.au%5Creportable-conduct-scheme%5Cnotify-and-update%5C%3E.) at <https://ccyp.vic.gov.au/reportable-conduct-scheme/notify-and-update/>.

#### Definition of physical and sexual abuse

The Children, Youth and Families Act does not define physical and sexual abuse. The suitability panel refers to the following working definitions of physical and sexual abuse:

* **Physical abuse** means non-accidental physical contact or the threat of physical contact to a child that causes or is likely to cause more than minimal or transient adverse physical or emotional consequences for the child.
* **Sexual** **abuse** means sexual or indecent conduct by an adult toward a child or exposure by and adult of a child to sexual or indecent conduct.

Further guidance can be found at the [Suitability Panel website](http://www.suitabilitypanel.vic.gov.au/) at <http://www.suitabilitypanel.vic.gov.au/>.

### Following receipt of a section 81 or s.82 report

When the Secretary receives a section 81 or 82 report alleging physical and/or sexual abuse, the Register of Carers is notified. The carer’s record on the Register of Carers is then modified to indicate the carer’s status as ‘under investigation’.

The department will advise all service providers that have the carer currently registered, or have a current disqualified carer check, of the receipt of the section 81 or 82 report. The service provider will be advised of the carer’s name, date of birth and requested to advise the department of the action the provider intends to take in relation to the carer’s employment or engagement.

### Independent investigations

The Secretary must consider the section 81 or 82 report and determine whether an independent investigation is required. If an independent investigation is required, the Secretary will refer the matter to an authorised investigator.

The authorised investigator is independent of the department. The authorised investigator will gather evidence about the allegation and interview the carer, witnesses, the child/children as appropriate, and any other relevant witnesses. The authorised investigator is required to consider the evidence gathered and make a finding as to whether, on the balance of probabilities, the carer physically or sexually abused the child.

Section 90 of the Children, Youth and Families Act sets out the powers of an authorised investigator. This includes, where necessary, powers to interview or re-interview victims, where the Secretary is satisfied that this would not be detrimental to the child or young person’s wellbeing.

Service providers and their staff are required under s. 91 of the Children, Youth and Families Act to provide the authorised investigator with ‘reasonable assistance and access to records and employees of and persons engaged by the service’.

1. Note that service providers may also choose to use Carer Development Plans as a preventative management tool. [↑](#footnote-ref-1)