



HS13	Healthy and Safe Services	Duty of Care Policy and Procedures
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<b>What this policy aims to do</b>	Make sure all MASS staff understand and fulfil their duty of care to everyone who uses a MASS service, and in doing that balance duty of care with respect for the person's right to choose
<b>Who this policy applies to</b>	All service users and all staff and volunteers involved in service delivery
<b>Who is responsible for carrying out this policy</b>	The Director or responsible managers and service delivery staff
<b>What words used in this policy mean</b>	' <i>Duty of Care</i> ' means a duty to take reasonable care of a person ' <i>Negligence</i> ' means a breach of duty of care which results in injury or harm (could be physical, emotional or financial)
<b>Legislation this policy is based on</b>	<a href="#">National Disability Service Standards</a> <a href="#">DHS Roadmap for achieving dignity without restraint</a> <a href="#">Child Safe Standards</a>
<b>Other relevant policies</b>	MS3 Staff Code of Conduct A2 Decision Making and Choice A3 Involvement of Families and Advocates HS8 Positive Behaviour Support HS12 Client Incident Reporting HS14 Child Safe MBD4 Risk Management

<b>Version</b>	<b>Date</b>	<b>Author/Editor</b>	<b>Approved by</b>	<b>Notes</b>
1.0	26/8/2016	Peter Lane		
1.1	6/3/2019	D Stephenson		Update format
1.2	16/8/2019	D Stephenson		Update to VRQA requirements
1.3	17/6/2020	D Stephenson	S. Reeves	Annual Review. Minor edits.

## Duty of Care Policy

“Duty of Care” is an element of the tort of negligence. In broad terms the law of negligence provides that if a person suffers injury as the result of a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence.

Negligence, is determined on the balance of probabilities, that:

- A duty of care was owed to a person/child at the time of injury
- The risk of injury was reasonably foreseeable
- The likelihood of the injury occurring was more than insignificant
- There was a breach of the duty of care or a failure to observe a reasonable standard of care; and
- This breach of failure caused or contributed to the injury, loss or damage suffered.

From 1 July 2017, an additional duty of care exists that will establish presumption of liability, such that MASS will need to prove that they took “reasonable precautions” to prevent child abuse, if needed to defend a legal claim. This new duty reinforces the importance of ensuring that MASS takes reasonable precautions to minimise the risk of child abuse.

MASS employees have a legal duty to take reasonable care to prevent another person being harmed. Negligence can result if a worker’s actions, or failure to act, fall below a reasonable standard and result in harm that should have been foreseen. Duty of care refers not only to the actions of a staff member or volunteer but also the advice they gave or failed to give.

MASS works with people who are vulnerable, including children, and has a strong commitment to keeping them safe. Staff are expected to always address issues of risk and duty of care in ways that protect people's health and safety as well their privacy and dignity. MASS staff must obey the law at all times and follow MASS policies and procedures.

MASS staff are held to a high standard of care in relation to clients and their families. The duty requires staff to take reasonable steps to minimise the risk of reasonably foreseeable harm, including:

- Ensuring MASS complies with the seven Child Safe Standards
- Provision of suitable and safe premises
- Provision of an adequate system of supervision
- Implementation of strategies to prevent bullying
- Ensuring that medical assistance is provided to sick or injured clients
- Managing employee recruitment, conduct and performance.

The duty is non-delegable, meaning that it cannot be assigned to another party.

Whenever a teacher-client or carer-client relationship exists, there is a higher expectation to the duty of care to take measures as are reasonable in the circumstances to protect a child under their charge from reasonably foreseeable risks of injury. The nature and extent of this duty will vary according to the circumstances. For example, the duty of care will be higher when taking clients on excursions off-site rather than in the classroom or residences.

The important issue in all cases is the precautions that MASS could reasonably be expected to have taken to prevent the injury from occurring. This will involve consideration of the following factors:

- Identifying the risk of harm
- The probability that the harm would occur if care were not taken
- The likely seriousness of the harm
- The social utility of the activity that creates the risk of harm.

There will be times when MASS staff will have to balance the rights of people using services to make choices, including taking risks, with their responsibility to help protect vulnerable people from harm to themselves, other people or from other hazards. There will also be times when staff will assist service users to take risks or engage in risky activities. Staff may provide information and advice, encourage precautions to be taken and document the decision while respecting the individual's right to take risks and make their own decisions.

There will be other times when staff decide not to assist service users to take risks and must inform the Director or responsible team leader of their concerns, particularly if they feel MASS should intervene to protect a person's safety. Staff have a duty of care to act in an emergency, where a person is in immediate danger or harming themselves, another person or where there is extreme risk of serious property damage.

MASS's duty of care extends to cover clients while attending school, being transported to and from MASS activities, in residential care, while receiving in-home services, at camps and on excursions. This duty may extend out of normal school hours and work hours and precautions taken where there is responsibility for the care of clients

Staff should be aware that this policy is designed to help them day to day, but it does not constitute legal advice. Staff and volunteers should be careful about giving advice that is beyond their competence, or beyond what normally would be expected in their position. If they are faced with complex decisions about intervention and duty of care, they must talk to a team leader.

## Duty of Care Procedures

When someone using MASS services wants to do something that poses a risk to themselves or other people, you must consider:

- The law
- MASS policies
- What the risk is
- How likely it is that there will be an injury or other misfortune
- How serious that injury or misfortune could be
- What precautions might help reduce the risk.

When someone using MASS services seeks your advice:

- Do you have the knowledge and experience to provide advice on this activity or decision?
- Can you communicate effectively with the person in order to explain the potential benefits and risks of alternate decisions or actions?
- If not, can you arrange help so that someone else can provide the advice or communicate more effectively?

When someone using MASS services wants to do something that poses a risk to themselves or other people, you should consider:

- Are you satisfied that the individual is making an informed decision?
- How likely it is that there will be an injury to him/herself, another person or damage to property? How serious could it be?
- What precautions might help reduce the risk?
- What is the potential benefit to the person from experiencing the dignity of risk?
- Do you or does someone else have the power to intervene?

If you assess that the benefits outweigh the risks, you should:

- Provide whatever support the person needs to help them do the activity they have chosen
- Discuss precautions with the person and help put them in place
- Document the decision-making process in the person's file, including who was involved in discussions, what external people were consulted, the factors considered, and precautions taken.

If you decide that the risk outweighs the benefit, you should:

- Inform the Director or responsible team leader of this decision
- Seek advice from a specialist where you and the team leader determine the risk is so great that intervention or restraint should be considered, and follow MASS's policy on positive behaviour support HS8

- Document the decision-making process in the person's file, including who was involved in discussions, what external people were consulted, and factors considered in the decision to advise against the risk.

### Emergency action

- You must take action in an emergency to prevent a person harming themselves, another person or seriously damaging property, e.g. physically restraining a person to prevent them from running onto the road.
- Follow MASS's policy on HS8 Positive Behaviour Support and reporting procedures where emergency restraint has been used.