

Mansfield Autism Statewide Services

Duty of Care Policy and Procedures

HS13	Healthy and Safe Services	Duty of Care Policy and Procedures
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What this policy aims to do	Make sure all MASS staff understand and fulfil their duty of care to all MASS clients and in doing that balance duty of care with respect for the person's right to choose.
Who this policy applies to	All clients and all staff and volunteers involved in service delivery.
Who is responsible for carrying out this policy	The CEO or responsible managers and service delivery staff
What words used in this policy mean	<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)
Legislation this policy is based on	National Disability Service Standards DFFH Roadmap for achieving dignity without restraint Child Safe Standards NDIS Practice Standards Nov 2021
Other relevant policies	MS3 Staff Code of Conduct SA1 Client Rights and Responsibilities HS8 Positive Behaviour Support HS10 Client Incident Reporting HS4 Child Safe HS7 Supervision and Outings SA4 Managing Client Risk

Version	Date	Author/Editor	Approved by	Notes
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.

1.4	18/2/2021	D Stephenson		Added reference to NDIS Practice Standards
1.5	26/11/2021	S Walker	S Reeves	Annual review: change Director to CEO, clarify duty of care, updated Child Safe standards
1.6	25/08/2022	T de Vries	S Reeves	Include different measures for younger students
1.7	12/12/2023	T de Vries	S Reeves	Annual Review, re-brand, link to new supervision policy

DUTY OF CARE POLICY

Duty of Care Policy

A **duty of care** is a legal obligation (that we all have) to take reasonable steps to not cause foreseeable harm to another person or their property.

A duty of care is breached when someone is injured because of the action (or the lack of action) of another person when it was reasonably foreseeable that the action could cause injury, and a reasonable person in the same position would not have acted that way

In Australia, the law of negligence provides that if a person suffers injury as the result of a breach of duty of care, the injured person should be compensated for loss and damage flowing from that breach.

All MASS employees working with clients or students owe a duty of care to those clients or students.

MASS employees have a legal duty to take reasonable care to prevent another person being harmed. Negligence can result if an employee or volunteer'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 will need to prove that they took "reasonable precautions" to prevent child abuse, if needed to defend a legal claim. This reinforces the importance of ensuring that MASS takes reasonable precautions to minimise the risk of child abuse.

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 eleven 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 POLICY

duty of care may 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 CEO 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. Different and sometimes greater measures may need to be taken for younger students or students with additional disability to discharge this duty of care.

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

