

# The Paraplegic and Quadriplegic Association of SA Inc.



## WHS&E -

## Duty of Care Policy and Procedure

### STATEMENT

The Paraplegic and Quadriplegic Association of South Australia Incorporated (PQSA) is legally bound to exercise a duty of care for all workers and clients to ensure, as far as reasonably practicable, that they are safe from injury and risks to health while at work.

Approved by: 	Date: 23/3/18
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**The Paraplegic and Quadriplegic Association of SA Inc.(PQSA) is incorporated under the *Association Incorporation Act 1985 (SA)* and conducts its business through operating Divisions, namely Support Services and HomeCare+.**

*Please note that printed copies are not able to be controlled and the Shared Drive should always be referred to for the most current version.*

## **SCOPE**

Compliance with this policy is a condition of appointment for all workers engaged to provide services on behalf of PQSA.

## **DEFINITIONS**

**Client** – a person who receives services from any division of PQSA

**Dignity of risk** – the right for a client to have autonomy and self-determination to make choices for themselves and potentially take reasonable risks; this gives them the freedom to make mistakes and to learn from them

**Due Diligence** – a PCBU must display a minimum standard of behaviour involving a system which provides relevant regulatory provisions and adequate supervision ensuring that the system is properly carried out, taking reasonable steps to—

- (a) acquire and keep up-to-date knowledge of work health and safety matters; and
- (b) gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risks associated with those operations; and
- (c) ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- (d) ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and
- (e) ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act.

### **Examples—**

For the purposes of paragraph (e), the duties or obligations under this Act of a person conducting a business or undertaking may include:

- reporting notifiable incidents;
- consulting with workers;
- ensuring compliance with notices issued under this Act;
- ensuring the provision of training and instruction to workers about work health and safety;
- ensuring that health and safety representatives receive their entitlements to training.

**Duty of Care** – a worker has a legal obligation to take reasonable care (be sensible and cautious) not to cause harm to another person when undertaking a task or activity.

**Hazard** - something with the potential to cause an injury or illness.

**Health** – refers to the physical and psychological wellbeing of a worker

**Incident** - an event which occurred, or could occur, resulting in: injury, ill health or fatality

**Manager** – a person who is charged with the management or direction of PQSA and its divisions

**Must** – indicates a mandatory action required by law, industrial instrument, or an Association policy or procedure.

**Negligence** - is failure to exercise reasonable care.

**Officer** – any person who has the authority to influence or to direct the actions of an employee/volunteer/contractor/collector.

**Person Conducting a Business or Undertaking (PCBU)**. – for the purpose of this policy, refers to PQSA and its divisions

**Reasonably Practicable** - in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- a. the likelihood of the hazard or the risk concerned occurring
- b. the degree of harm that might result from the hazard or the risk
- c. what the person concerned knows, or ought reasonably to know, about:
  - the hazard or the risk
  - ways of eliminating or minimising the risk
- d. the availability and suitability of ways to eliminate or minimise the risk
- e. After assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

**Risk control** - strategies to eliminate or minimise the risks of an injury or illness resulting from a hazard.

**Worker** –is a person who carries out work in any capacity including work as an employee, contractor or subcontractor, an employee of a contractor or sub-contractor, apprentice or trainee, or a student gaining work experience, or a volunteer.

**Workplace** - any place where a worker or self-employed person works or any place where a person goes while at work (includes offices, vehicles, clients' homes and community venues).

## **RESPONSIBILITY**

### **PCBU – Duty of Care**

PQSA, as a PCBU, has a Duty of Care to its clients and workers to ensure, as far as reasonably practicable, that they are safe from injury and risks to health while at work and to provide and maintain:

- a safe working environment
- safe systems and methods of work
- safe plant, equipment and substances
- adequate facilities (e.g. first aid, drinking water, toilet facilities)
- information, instruction, training and supervision to ensure safety
- monitored working conditions (e.g. home WHS assessments)
- monitoring of the health and safety of workers (e.g. review injury records)
- records of work related incidents and injuries

- hazards identification, conduct risk assessments and control risks
- monitored Workplace Health and Safety Management systems
- consultation of employees and their representatives about Workplace Health and Safety issues
- information to workers to ensure they are familiar with their obligations and entitlements in accordance with this Policy.

### **Workers' Duty of Care**

All employees, volunteers and contractors have a Duty of Care and must:

- take reasonable care to protect their own health and safety
- not adversely affect the health and safety of others
- use equipment provided by PQSA to protect their health and safety
- follow reasonable instructions
- not be affected by drugs or alcohol
- report hazards and incidents/injuries
- be familiar with their obligations and entitlements in accordance with this Policy.

### **Client's Duty of Care**

As the client's home is a workplace, all clients must provide, as far as is reasonably practicable, a safe working environment for workers in their home. To ensure a safe work environment, a client should:

- treat workers with courtesy and respect (non-abusive and non-threatening)
- secure their pets to avoid harm to the worker
- allow reasonable modifications to be made to ensure the safety of workers (e.g. move mats that may cause a fall)
- not smoke while the worker is present
- provide appropriate and safe equipment (if required and as agreed with PQSA).

### **Human Resource Department is responsible for ensuring that:**

- WHS policies are reviewed in a timely manner
- Training is provided for all workers on their legal responsibilities.

## **POLICY**

PQSA will ensure the highest level of care is taken to eliminate or minimize the risk of harm, illness, injury or death to clients, balanced with each client's dignity of risk.

All PQSA workers are legally required to ensure they are aware of their Duty of Care obligations in relation to clients, co-workers and others in the workplace. Workers must perform work in a manner that:

- Prevents foreseeable harm
- Prevents injury or illness
- Ensures clients' rights are protected
- Meets required standards for regular documentation and confidentiality

- Demonstrates ethical behavior
- Ensures client knowledge and consent is obtained prior to carrying out actions.

Failure to reasonably meet Duty of Care obligations could lead to injury and could be considered as constituting negligence in a court of law.

Workers are required to use their skills and experience to assess what actions they should take in each situation of potential harm. Where possible, decisions should be discussed with their Manager/Supervisor. Duty of care is breached by failing to do what is reasonable or by doing something unreasonable that results in harm, loss or injury to another. This can be physical harm, economic loss or psychological trauma.

There is no clearly defined or simple formula for determining what is reasonable in relation to Duty of Care and appropriate worker responses in every situation. Workers must be conscious of their responsibility to ensure an appropriate level of protection is provided and to take reasonable care to avoid foreseeable risks without unduly compromising the client's dignity of risk.

## **PROCEDURE**

### **DUTY OF CARE AND NEGLIGENCE**

The law imposes a Duty of Care on everyone to take reasonable care to avoid injury to another person or damage to property as a result of any action or inaction. In simple terms, this is a duty not to be careless or negligent.

A Duty of Care can be breached either by action or inaction.

#### **Framework for making decisions about whether to exercise duty of care measures**

This framework provides workers with a set of questions or issues for consideration in relation to their duty of care to PQSA clients.

#### **Assess the likelihood and extent of the foreseeable benefits:**

- How will it benefit the client?
- What new skills or experiences will it provide?
- How will it affect their feelings of self-worth?
- What new relationships will they be exposed to?

#### **Assess the likelihood and extent of any foreseeable risks:**

- What risks may the client be exposed to?
- What risks may client expose others to?
- What skill deficits does the client have which may put them at risk?

#### **If there are risks, can these be minimized without compromising the benefits?**

- How can safeguards be built in which protect the client, but still allow them the opportunities for experience?
- How can these safeguards be implemented in the least restrictive way?
- What resources are required for placement of these safeguards?

#### **Balance any foreseeable harm against foreseeable benefit:**

- Are the benefits worth it?

***All workers and clients must ensure they follow our “Hierarchy of Duty of Care” to ensure a safe workplace for everyone.***

### **Hierarchy of Duty of Care**

- 1<sup>st</sup> Look after yourself, maintain a safe work environment
- 2<sup>nd</sup> Look after other people
- 3<sup>rd</sup> Maintain and protect plant and equipment.

### **RELATED LEGISLATION**

- ◆ Children's Protection Act 1993 (SA)
- ◆ Civil Liability Act 1936
- ◆ Law Reform (Contributory Negligence And Apportionment Of Liability) Act 2001
- ◆ National Standards for Disability Services
- ◆ Safeguarding People with a Disability Supported Decision-Making and Consent Policy.
- ◆ Work, Health and Safety Act 2012
- ◆ Work, Health and Safety Reg. 2012
- ◆ Workers Compensation and Rehabilitation Act 1986

### **SUPPORTING PQA DOCUMENTATION**

- ◆ Hazard ID, Risk Assessment and Control Management
- ◆ Mandatory Reporting
- ◆ National Police Clearance Policy and Procedure
- ◆ Client Home WHS Assessment Form Standard Operating Procedures
- ◆ Client Home WHS Assessment Form
- ◆ Hazard and Incident/Injury/Near Miss Reporting Forms
- ◆ Client Rights and Responsibilities
- ◆ Code of Ethical Behavior
- ◆ WHS Property Audit Forms
- ◆ Workplace Health, Safety and Environment Management System

### **BREACHES OF THIS POLICY**

A **breach** of this policy is grounds for disciplinary action, up to and including termination of employment. Ignorance of these procedures will not generally be accepted as an excuse for non-compliance. Only in extreme circumstances and where such ignorance can be demonstrated to have occurred through no fault of the individual concerned will PQSA accept such an argument.

### **DISTRIBUTION AND REVIEW**

PQSA will ensure all persons engaged to provide services either paid or unpaid will be aware of this policy and will have easy access to it in an appropriate format. All policies are to be reviewed on a periodic basis or when legislation or government policy determines.