




## Duty of Care Policy

### STATEMENT

The Paraplegic & Quadriplegic Association of South Australia Ltd (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.

<p>Approved by:</p>  <p>Chief Executive Officer</p>	<p>Date: December 2022</p>
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**In this policy, 'us' 'we' or 'our' refers to The Paraplegic & Quadriplegic Association of South Australia Ltd ACN 644 670 977, which is a Company Limited by Guarantee and conducts its business through Lifestyle Support and HomeCare+ services.**

*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**

Refer to the PQSA Policy and Procedure Definition Glossary

## **RESPONSIBILITIES**

It is our responsibility to communicate our policies and procedures to all workers on a systematic basis. Senior Leadership, Managers and Supervisors are responsible for monitoring their workers' understanding of their obligations and need for compliance with policies and procedures. Workers are responsible for complying with our policies and procedures.

### **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 physical, mental and emotional working environment
- safe systems and methods of work
- safe plant, equipment and substances
- adequate facilities (e.g. PPE, first aid, drinking water, toilet facilities) at all work sites
- 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
- hazard identification, risk assessments and related controls
- monitored Workplace Health and Safety Management systems
- consultation with workers and their representatives about Work 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 workers, 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 instruction and follow policies and procedures including client plans
- not be affected by drugs or alcohol
- report concerns, hazards, incidents and injuries
- be familiar with their obligations and entitlements in accordance with this Policy.

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

As a client's home is also a workplace, 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 (free from abuse and mistreatment)
- declare risks and mitigate where possible, such as securing pets to avoid harm to the worker
- allow reasonable modifications to be made to ensure the safety of workers (e.g. remove obstacles that may cause a fall)
- not smoke while the worker is present
- provide appropriate and safe equipment (if required and as agreed with PQSA).

### **The People & Culture team 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 minimise 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 behaviour
- 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.

## **PROCEDURES**

### **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.

#### **Duty of Care – Decision Making Framework**

This framework provides workers with a set of questions or issues for consideration in relation to their duty of care to PQSA clients, balanced with each client's dignity of risk.

Assess the likelihood and extent of the foreseeable benefits:

- is this a decision reasonable made by other community members?
- seek to determine the individual's current knowledge of the activity and related risks
- 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 the 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?

***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 and Young People (Safety) Act 2017
- Civil Liability Act 1936
- Fair Work Act 2009
- Law Reform (Contributory Negligence And Apportionment Of Liability) Act 2001
- National Standards for Disability Services
- Return to Work Act 2014
- Safeguarding People with a Disability Supported Decision-Making and Consent Policy (October 2015)
- Work, Health and Safety Act 2012
- Work, Health and Safety Regulations 2012

## **SUPPORTING PQSA DOCUMENTATION**

- Child and Young Person Protection Policy and Procedures
- Client – Choice and Control Policy and Procedures – EASY READ
- Client - Rights and Responsibilities Statement
- Client Home WHS Assessment Form
- Client Home WHS Assessment Form Work Instruction
- Code of Conduct and Ethical Behaviour
- Duty of Care, Dignity of Risk and Process to Seek Appointment for Formal Decision Maker Procedures
- Environmental Hazard Report Form
- Incident Report Form
- WHS Property Audit Forms
- Workplace Health and Safety Management Policy
- Worker Screening – Client Safeguarding Policy

## **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.