



# CLIENTS AT RISK and our DUTY OF CARE

(Risk Management, Safety, WHS & Legal Requirements)

## Policy & Procedure

<b>QA REFERENCE</b>	CWG P&P No 02
<b>INTRODUCED</b>	3 <sup>rd</sup> February 2015
<b>LAST REVIEWED</b>	12 <sup>th</sup> May 2021
<b>NEXT REVIEWED</b>	12 <sup>th</sup> May 2024
<b>RESPONSIBILITY</b>	The Manager, Performance and Risk is responsible for the review and currency of this policy and associated procedures.
<b>APPROVED</b>	Approved by the Chief Executive Officer on [insert date]  This policy and procedure is valid from the date of introduction and remains in force, as amended from time to time, until such time as formally revoked by resolution at a meeting of the Operational Leadership Group.
<b>ENDORSED</b>	Endorsed by the Operational Leadership Group on [insert date]
<b>AMENDED – RECOMMENDED</b>	Amended by the policy committee on [insert date].
<b>RATIFIED</b>	Ratified by the Board of Directors by resolution at a meeting of the Board on [insert date]  This policy is valid from the date of introduction and remains in force, as amended from time to time, until such time as formally revoked by resolution at a meeting of the Board of Directors.
<b>REFERENCES</b>	
<b>Related Legislative Acts and other sources of Authority</b>	<p><u>COMMUNITY SERVICE ORGANISATIONS</u></p> <ul style="list-style-type: none"> <li>• Children Youth and Families Act 2005</li> <li>• Community Services Act 1987</li> <li>• Child Wellbeing and Safety Act 2005</li> </ul> <p><u>HOUSING PROVIDER</u></p> <ul style="list-style-type: none"> <li>• Housing Act 1983 (Vic) Part VIIIA – Social Housing</li> <li>• Residential Tenancies Act 2018 – with amendments 1/1/21</li> </ul> <p><u>NDIS PROVIDER</u></p> <ul style="list-style-type: none"> <li>• Disability Services Act 1986 (Cth)</li> <li>• Disability Act 2006 (Vic)</li> <li>• National Disability Insurance Scheme Act 2013</li> </ul> <p><u>EMPLOYMENT CONDITIONS</u></p> <p>Primary</p> <ul style="list-style-type: none"> <li>• <b>Fair Work Act 2009 and Regulations 2009 (Cth)</b></li> <li>• <b>Equal Opportunity Act 2010</b></li> </ul>

	<ul style="list-style-type: none"> <li>● <b>Occupational Health and Safety Act 2004</b></li> </ul> <p><u>CLIENT SERVICES</u></p> <ul style="list-style-type: none"> <li>● Charter of Human Rights and Responsibilities Act 2006</li> <li>● Freedom of Information Act 1982</li> <li>● Health Records Act 2001</li> <li>● Information Privacy Act 2000</li> <li>● Modern Slavery Act 2018 (Cth)</li> <li>● Privacy Act 1988 (Cth)</li> <li>● Privacy and Data Protection Act 2014</li> <li>● Protected Disclosures Act 2012</li> <li>● Public Administration Act 2004</li> <li>● Public Health and Well-being Act 2008</li> <li>● Working with Children Act 2005</li> <li>● Drugs, Poisons and Controlled Substances (Amendment) Act, 1981</li> <li>● Victims of Crime Act Assistance Act 1996</li> <li>● Privacy and Personal Information Protection Act 1998</li> <li>● Health Records and Information Privacy Act 2002.</li> </ul>
<p><b>Related Standards, Guidelines and other References</b></p>	<p><u>STANDARDS</u></p> <ul style="list-style-type: none"> <li>● Risk Management – Standards Australia</li> <li>● Risk Management – Guidelines AS ISO 31000 2018</li> <li>● Aust Government Risk Management Policy Framework</li> </ul> <p><u>WEBSITE LINKS</u></p> <ul style="list-style-type: none"> <li>● Betrayal of Trust: Fact Sheets, ‘Failure to Disclose’ and ‘Failure to Protect’ <a href="http://www.cfecfw.asn.au/betrayal-of-trust-factsheet-the-new-failure-to-disclose-offence/">www.cfecfw.asn.au/betrayal-of-trust-factsheet-the-new-failure-to-disclose-offence/</a></li> <li>● A good practical guide to these dilemmas is <i>Duty of Care - Who's Responsible? A guide for carers supporting people with disabilities.</i></li> <li>● <a href="#">Australian Human Rights Commission</a></li> <li>● <a href="#">Commonwealth Ombudsman</a></li> <li>● <a href="#">DFFH Child Safe Standards</a></li> <li>● <a href="#">DFFH Families &amp; Children - Child Protection</a></li> <li>● <a href="#">DFFH Victoria</a></li> <li>● <a href="#">Disability Services Commissioner</a></li> <li>● <a href="#">Mandatory Reporting</a></li> <li>● <a href="#">Office of the Disability Services Commissioner</a></li> <li>● <a href="#">Victorian Ombudsman’s Complaint Handling Good Practice Guide</a></li> </ul>
<p><b>Related MASP Policy and Procedure Documents</b></p>	<ul style="list-style-type: none"> <li>● Risk Management – M’t P&amp;P No 14</li> <li>● Occupational Health &amp; Safety – HRM P&amp;P No 08</li> <li>● MASP Risk Register – M’t P&amp;R No 01</li> <li>● Client Outings &amp; Activities Risk Assessment - CWG F&amp;T No 12.</li> </ul>
<p><b>Related MASP Instructions and Guidelines</b></p>	<ul style="list-style-type: none"> <li>● Client Risk Management Plan</li> <li>● Clients at Risk and our Duty of Care – Practice Guidance (This Policy should be read in conjunction with this practice guidance and fact sheets on the new ‘failure to disclose’ and ‘failure to protect’ and offence.</li> </ul>

<b>Related MASP Forms and Templates</b>	<ul style="list-style-type: none"> <li>• Client Risk Screening</li> <li>• Client Offsite Service Risk Assessment</li> <li>• Client Outings and Activities Risk Assessment</li> <li>• OH&amp;S Risk Assessment</li> <li>• MARAM TRAM Adult Victim Survivor Comprehensive Risk Assessment tool</li> </ul>
<b>ACRONYMS/DEFINITIONS</b>	
<ul style="list-style-type: none"> <li>• MASP</li> <li>• Risk Management</li>   <li>• Risk</li>   <li>• Likelihood</li> <li>• Impact</li> <li>• Due Diligence</li>   <li>• Risk Assessment</li>   <li>• Risk Treatment</li>   <li>• Risk Incident</li> </ul>	<ul style="list-style-type: none"> <li>• Mallee Accommodation and Support Program Ltd.</li> <li>• Risk management is a systematic process whereby an organisation identifies and assesses risks, develops strategies to mitigate risk, assigns responsibilities, and monitors and reviews progress.</li> <li>• Risk is the chance of something happening that will impact on objectives, measured in terms of likelihood of occurrence and impact.</li> <li>• Likelihood is the probability or chance of an incident occurring.</li> <li>• Impact is the actual or potential impact that may result from a risk occurring.</li> <li>• Due Diligence is an action considered reasonable for people to be expected to take in order to keep themselves or others and their property safe.</li> <li>• Risk assessment is the process of analysing and evaluating the likelihood and impact of potential risks.</li> <li>• Risk treatment is identifying and implementing actions to eliminate risks or reduce impacts.</li> <li>• Risk incident is realisation or occurrence of a risk impact.</li> </ul>

## PURPOSE

This policy provides information to all MASP staff about clients at risk and our duty of care and the purpose of completing comprehensive client risk assessment and have robust client risk management processes in place that guide staff to exercise a duty of care to all MASP clients. It also gives some practice guidelines in dealing with clients considered to be at risk or in crisis situations and encompasses an obligation to take reasonable care in dealing with clients, being aware of known or foreseeable risks to their safety, health and well-being and ensuring that action is taken which addresses these risks while they are a client of MASP.

## SCOPE

This policy applies to:

- board directors
- all staff, including: managers and supervisors; full-time, part-time or casual, temporary or permanent staff; job candidates; students on placement and volunteers
- how MASP provides services to clients and how it interacts with other members of the public
- all aspects of employment, recruitment and selection; conditions and benefits; training and promotion; task allocation; shifts; hours; leave arrangements; workload; equipment and transport
- on-site, off-site or after-hours work; work-related social functions; conferences – wherever and whenever staff may be as a result of their MASP duties.
- staff treatment of clients, of other staff and of other members of the public encountered in the course of their MASP duties.

## POLICY

This policy aims to provide MASP staff with information about their duty of care while providing services in ways that minimise the foreseeable risk to our clients as well as conforming with the statutory and regulatory obligations of the organisation. This is achieved through the following:

- 1. Client Risk Management and Duty of Care:** This instruction addresses the issues of client risk assessment and client risk management in the context of the requirements of staff to exercise a duty of care to its clients. It also gives some practice guidelines in dealing with clients considered to be at risk or in crisis situations. The issue of duty of care encompasses an obligation to take reasonable care in dealing with clients, being aware of known or foreseeable risks to their safety, health and well-being and ensuring that action is taken which addresses these risks while they are a client of MASP.
- 2. Organisational Risk Management:** Risk Management, in relation to achievement of organisation imperatives, (e.g. financial, legal, assets, staff safety etc) is well integrated into MASP management processes. Although some program areas do address aspects of client risk with specific client groups, MASP is increasingly recognising the need for client Risk Assessment across all of the agency as a discrete process separate from general client assessment and distinct from the development of general client action plans (usually designed to overcome identified skill deficits and achieve client outcomes).
- 3. OHS Considerations:** Occupational Health and Safety legislation and MASP policy and procedure require us to identify and isolate risks to the safety and well-being of staff (and clients). These risks are often narrowly defined and in relation to the staff/client interface revolve around identification of workplace hazards and more recently in dealing with the threat, to staff, of occupational violence.
- 4. Individual Client Risk: Staff Responsibility:** There is a need to specifically focus on client risks that impact on health and safety of clients themselves, staff and others, to identify them at an early stage and to actively deal with them in the context of (and sometimes supplementary to) our ongoing action plans. The agency asks staff to not turn a blind eye to risk issues even if they are not directly related to the provision of services MASP offers. Risk identification and awareness of risk to clients is the responsibility of all and all staff have a duty to be aware of obvious risk and to exercise reasonable care, consistent with this understanding.
- 5. Risk is more than skill deficit:** The Client Risks in question are different from client service needs, living or social skill deficits. It is incorrect to suggest that risk can be defined as the client's deficit in anything that MASP offers through its programs and services. In that wider sense, all our clients are 'at risk' i.e. of homelessness, inadequate housing, of family breakdown, poor parenting, of consequences of disability etc.

## PROCEDURE

The client risk we are seeking to identify is different in that it identifies behaviour, conditions or situations which will negatively impact on the achievement of broader client goals and objectives, and most importantly, have implications for the health and safety of clients, MASP staff and others. These behaviours, conditions or situations are not just part of the list of issues the client has but need to be addressed prior to or simultaneously with them. Indeed, when they arise in the middle of our work with clients they often need to be given priority.

The type of risk we need to be aware of include, but are not limited to,

- Risks posed by excessive drug or alcohol consumption or addiction;
- Risks posed by clients who can be violent or aggressive;
- Risks posed by clients with significant mental health problems;

- Risks posed by clients with specific health problems such as infectious diseases, epilepsy etc;
- Risks posed by clients who self-harm or become suicidal;
- Risks posed by clients who exhibit challenging behaviours (often in response to known triggers);
- Risks of being sexually abused or subjected to domestic violence;
- Risks associated with physical hazards in the home (and risks posed by staff during home visits by clients, particularly if the client manifests other risks as above).

## **1. MASP's Duty of Care**

As an agency MASP must also exercise a duty of care to its staff by ensuring that they are aware of risks and trained or informed in methods of dealing with them.

As an agency MASP also has Work Health and Safety (WHS) obligations to its workforce (and clients) - safety of staff and clients is a critical issue.

All people owe a duty of care in some situations. In work situations, it is mainly the responsibility of the employer (i.e. MASP). Employees are generally protected by their employer as long as they follow policies and instructions.

MASP as an organisation has a duty of care to its workforce to make sure they are appropriately instructed and trained to undertake the responsibilities of the job they are asked to undertake. In this respect there is a minimum expectation that adequate policy and procedure will be available and that there is the availability of supervision and performance review and of training and professional development.

## **2. MASP's commitment to ensure staff understand risk and exercise reasonable care**

As an agency, MASP has made a commitment to: provide training and information for all staff of their duty of care, code of conduct and professional boundaries;

MASP will provide and ensure all staff and volunteers receive information and training as part of their induction on duty of care.

In order to keep staff and volunteers informed of their duty of care requirements, MASP will also provide regular training updates and refreshers, prepare information sheets for distribution, make available known online training resources and ensure opportunities for case discussions at staff meetings. MASP will adopt policy which ensures that clients are assisted in making informed choices with regard to risk.

MASP will support clients and/or their carers and advocates to make their own decisions regarding their care and support at all times by providing information about risk management, (where appropriate by) involving significant others, family and friends and by seeking professional support.

Where clients are unable to make informed decisions on their own behalf, MASP will consult with the client's case manager (if they have one) or arrange for assessment by an appropriate professional.

Further action may include making application for a Financial Administrator or guardian to assist the client more specifically for ongoing decision-making support if the client is at risk.

- seek appropriate support for clients who may not have the ability to make informed choices;
- respect clients' rights to choose activities that could harm them, provided they understand the risks involved;
- prevent abuse or harm to clients as a result of staff actions, and
- investigate all incidents and accidents and ensure corrective actions and plans are appropriately documented.

MASP will document and investigate all reported incidents in line with the agency policy on Incident Reporting -M't P&P No 25 and take immediate action to ensure the safety and well-being of the client. MASP will review all incidents with the aim to prevent or minimise any future risk of harm.

### 3. Disclosure Requirements: Laws (Standards & guidelines for specific situations)

There are other laws, standards, codes and guidelines covering specific situations, such as;

- **preventing violence** - MASP has a duty of care to minimise the risk of violence. The Victorian WorkCover Authority has published guidelines entitled 'Preventing and Responding to Work-related Violence'.
- **food safety standards** - for safe preparation and handling of food. The Victorian Department of Health has published guidelines entitled 'Hygienic food preparation and handling in food businesses.
- **prescribed medications** - if you assist clients to manage their prescribed medications, be aware of the guidelines for medication management published by the relevant Commonwealth and State Departments.
- **child protection**: mandatory reporting for sexual and physical abuse for selected professionals in the Children, Youth & Families Act 2005; mandatory reporting for all adults of sexual abuse of a child under 16, employment screening laws including the Working with Children Check.

### 4. Disclosure and Reporting Obligations: Young People

In the case of a person contacting you about a child or young person at risk, make sure that you spend a moment explaining to the person what your role is and if you have any statutory obligations. If the concern expressed relates to child protection issues, then it is most appropriate that you refer the caller to the Department of Families, Fairness and Housing, which is responsible for investigating those allegations. If a person wishes to discuss a sexual abuse situation of a young person under 16, it is imperative that they are aware that the staff member has a legal obligation to report this to Police (as has the person wishing to disclose to you (see Section below).

If the caller refuses that option but persists in reporting a risk situation for children to you, then it would be important for you to gather relevant information so that you could make the appropriate notification to the Department of Families, Fairness and Housing (or Police).

### 5. Disclosure of Sexual Abuse of Children

This instruction is based on two Fact Sheets issued by the Department of Justice & Regulation after new offences for **failure to disclose** child sexual abuse and **failure to protect** a child from sexual abuse came into force on 27 October 2014. **Failure to disclose** This new law requires **any adult** (aged 18 and over) who holds a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child (aged under 16) to disclose that information to police (unless they have a reasonable excuse). This instruction should be read together with the general fact sheet on the new 'failure to disclose' offence.

This obligation applies regardless of:

- the type of service the child is receiving;
- whether the offence occurred during service delivery, or
- whether the child is a client of the department or funded organisation at all.

If the allegation involves a client and meets the criteria of the *Critical Client Incident Management Instruction*, staff are still required to report the incident to DFFH using the Client Incident Report form. It is a reasonable excuse for not reporting if the person receives confirmation from another reporter that a report has been made, that first person does not need to make another report. Child Protection intake workers may advise people reporting child sexual abuse that they have fulfilled their obligations under the offence by reporting to DFFH (Child Protection).

Individual MASP staff **must report within MASP all sexual abuse (or allegations thereof) of children under 16**. Such information must be reported up to the Team Leader level immediately, using the Critical Incident Report Form and immediately followed up verbally. The Team Leader, acting under direction of the Program Manager, will be responsible for debriefing the caseworker to ascertain

whether there are factors mitigating against reporting and if not, ensuring that this information is conveyed to Police or DFFH (within 24 hours).

There are **no exceptions** to the requirement for all staff to report abuse to supervisors and senior staff. There are other cases of sexual abuse (not involving children under 16) where, although reporting **may not** be mandatory to the Police, it is **mandatory** to be reported within MASP and in the case of sexual abuse by MASP staff, other severe consequences would follow.

**Failure to protect:** This new criminal offence has been created for failing to protect a child under 16 years from criminal sexual abuse. The offence applies where there is a substantial risk that a child under the care, supervision or authority of an organisation will become a victim of a sexual offence by an adult associated with that organisation. The person in authority will be guilty if they knew of the risk of abuse and had the authority to reduce or remove the risk, but negligently failed to do so. This instruction should be read together with the general fact sheet on the new 'failure to protect' offence.

## 6. Responding to emergencies and crisis situations

Urgency of need may be determined by clients themselves, or through observations of clients made by support workers or other staff. Observations which may indicate urgency of need include

- disorientation in person, time and place
- inability to communicate
- incoherence in speech
- signs of physical injury or distress
- extreme anxiety
- verbal or physical aggression
- self-injury
- suggestion of suicide.

While it is important to remain calm and speak in reassuring tones to settle a distressed or anxious client, it is also important to recognise when personal safety, or the safety of others, is at risk and take action to avoid harm.

In working with clients in crisis you are aiming to:

- support the client to move out of the crisis phase as soon as possible
- provide individual and agency support
- mobilise the client's own support systems
- use outside supports as required.

## 7. Timing of Response

Establishing the time frame under which you need to operate is a major consideration. This means that after identifying the level of risk you may need to respond immediately or you may need to proceed more slowly. Factors that may require immediate response may be:

- removing the client from their environment
- seeking urgent medical attention
- finding an interim place to stay.

Your supervisor (if available) and your own assessment skills are what you are most likely to draw on in the moment to use response strategies appropriate to each crisis situation that presents itself in your work with distressed clients.

Of course, there will be times when the appropriate response to a crisis is for you to immediately contact emergency services.

## 8. Contacting and using appropriate emergency services

There are times when a crisis requires you to get help from emergency services. Identified below are emergency services and possible crises where it is appropriate for you to contact one or more of them.

- If you have a telephone available, you can contact emergency services by telephoning 000.
- Triple Zero (000) is Australia's primary telephone number to call for assistance in life threatening or time critical emergency situations.
- Dialing 112 directs you to the same Triple Zero (000) call service and does not give your call priority over Triple Zero (000).
- 112 is an international standard emergency number which can only be dialed on a *digital mobile phone*.
- There is no advantage to dialing 112 over Triple Zero (000). Calls to 112 do not go to the head of the queue for emergency services, and it is not true that it is the only number that will work on a mobile phone.
- Dialing 112 from a fixed line telephone in Australia (including payphones) will not connect you to the emergency call service as it is only available from digital mobile phones.

Not only do you need to know when this is necessary, you also need to know what is expected of you. For instance, imagine your client has been seriously injured by another family member. If you are trained in first aid, you could apply basic first aid until the ambulance arrives.

## 9. Critical Incident / Incident reporting

MASP staff need to know what their responsibility is for reporting in any identified case of harm or risk of harm. Identifying and categorising risk are important aspects of crisis response. If you are unclear about how you can identify and categorise risk, consult with your supervisor to discuss this further and refer to Incident Reporting – M't P&P No 25 for further guidance.

- All incidents, injuries or accidents related to clients and all other incidents relating to your employment at MASP such as work injury, work accident, near misses, car accidents, damage to MASP property or assets, improper conduct of other staff and unacceptable staff to staff behaviour issues (harassment, bullying, discrimination etc) MUST be reported to MASP Senior Management.
- Staff must use the latest version of the DFFH incident reporting form. This includes a very wide variety of incidents 'caused' by the actions (or inaction) of clients, staff or others.
- The ONLY exception to this procedure is for reportable HACC related incidents to be recorded on the Department of Health Incident Report Form. The DFFH incident reporting form is available for on-line completion from SharePoint or directly from the DFFH website.
- Senior management will advise if any further documentation is required to be completed after the DFFH/DoH form is lodged.
- If in doubt about whether to report, discuss with your supervisor. The intention is to encourage reporting of incidents so that MASP can determine if there are existing or potential hazards that need to be attended too.
- The Chief Operations Officer co-ordinates the agency's response across all categories of incident.