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**CHCLEG001**

**Work legally and ethically**

**Learning Guide**

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## How to study this unit



You will find review learning activities at the end of each section. The learning activities in this resource are designed to assist you to learn and successfully complete assessment tasks. If you are unsure of any of the information or activities, ask your trainer or workplace supervisor for help.

The participant will be required to demonstrate competence through the following means:

### Methods of assessment

- Observation in the work place
- Written assignments/projects
- Case study and scenario analysis
- Questioning
- Role play simulation
- Learning activities
- Class discussion and group role-plays
- Assessment tasks



### Asking for help

If you have any difficulties with any part of this unit, contact your facilitator. It is important to ask for help if you need it. Discussing your work with your facilitator is considered an important part of the training process.

**Name of facilitator:** \_\_\_\_\_ **Phone number:** \_\_\_\_\_

## CHCLEG001 Work legally and ethically

Welcome to the unit **CHCLEG001 Work legally and ethically**, which forms part of the **2015 Community services training package**. This unit describes the skills and knowledge required to identify and work within the legal and ethical frameworks that apply to an individual job role. This unit applies to community services and health workers who play a proactive role in identifying and meeting their legal and ethical responsibilities.

The skills in this unit must be applied in accordance with Commonwealth and State/Territory legislation, Australian/New Zealand standards and industry codes of practice.

### WHAT YOU WILL LEARN

ELEMENT	PERFORMANCE CRITERIA
<b>Element 1: Identify and respond to legal requirements</b>	<ul style="list-style-type: none"><li>1.1 Identify, access and interpret sources of information about the legal requirements that apply to the work role</li><li>1.2 Identify the scope and nature of own legal responsibilities</li><li>1.3 Adhere to legal requirements in work practice according to workplace policies and procedures and scope of role</li><li>1.4 Recognise potential or actual breaches and report according to organisation procedures</li></ul>
<b>Element 2: Identify and meet ethical responsibilities</b>	<ul style="list-style-type: none"><li>2.1 Identify, access and interpret sources of information about the ethical responsibilities that apply to the work role</li><li>2.2 Identify the scope and nature of own ethical responsibilities</li><li>2.3 Meet ethical responsibilities according to workplace policies and protocols, and scope of role</li><li>2.4 Recognise potential ethical issues and dilemmas, and discuss with an appropriate person</li><li>2.5 Recognise own personal values and attitudes and take into account to ensure non-judgemental practice</li><li>2.6 Use effective problem solving techniques when exposed to competing value systems</li><li>2.7 Recognise unethical conduct and report to an appropriate person</li><li>2.8 Recognise potential and actual conflicts of interest</li></ul>
<b>Element 3: Contribute to workplace improvements</b>	<ul style="list-style-type: none"><li>3.1 Identify situations where work practices could be improved to meet legal and ethical responsibilities</li><li>3.2 Pro-actively share feedback with colleagues and supervisors</li><li>3.3 Identify and take opportunities to contribute to the review and development of policies and protocols</li></ul>

## Element 1: Identify and respond to legal requirements



### Identifying, accessing and interpreting sources of information about the legal requirements that apply to the work role

Workers in any organisation must comply with policy and procedural requirements, whilst adhering to the legal and ethical constraints within which the organisation operates. Community service workers need to know the legal requirements relevant to the type of service provided by the organisation for which they work. They must know how the relevant legislation, statutory and regulatory requirements will impact on the work they do and on their responsibilities and obligations.

Legislation and statutory requirement impact on the ways in which workers and management interact with clients and other stakeholders and on the ways in which client and worker rights and support needs are catered for. The type of clients with whom workers will interact will depend, to large degree, on the type of service offered and the community service area within which the employing organisation operates.

#### Community services clients might include:

- Individuals living in residential aged care environments
- Individuals living in the community
- Individuals who are prospective clients
- Individuals living in government funded services and/or institutions
- Unemployed people and job seekers
- Families
- Children and young people
- People seeking advice and assistance
- Children and families using children's services
- Homeless youth and adults
- Individuals seeking respite or applicative care
- Community groups who utilise facilities and casual services.

Although all of these people will have different needs and will expect different services, all of them have rights and will be protected under the legislation, statutes and regulations which impact on the service providing organisation.

## The Australian legal system



The law is a system of 'rules' that operate in our society to control the behaviour of individuals and groups within it. These 'rules' have been officially recognised in our society as 'law' or 'legislation'. Laws originate from our representatives in both federal and state Parliaments who consider what we as a people want to enshrine as appropriate modes of behaviour in our society. Once legislation has been passed by Parliament and signed into law by the Governor (state) or Governor-General (federal), we must abide by it. If we don't, then we are breaking the law.

Our police services have a key responsibility for maintaining the law, and our judicial system with upholding it and punishing those who are found by due process to have broken the law.

In the community services sector, there are a number of laws and regulations that relate specifically to client care and client services in the community. They exist to ensure that the rights of clients and workers are considered, a consistently high quality of service is provided, and that safety is always a primary consideration.

Community service organisations, including community-based and government services, have to comply with a minimum set of legal requirements. These vary according to the target group, but some legislation operates across all service types, such as Workplace health and safety (WHS), anti-discrimination and privacy laws.

Some services, for example those for children, people with disabilities, or aged care services, all have to adhere to laws relating to abuse and physical protection. Workers have to be aware of the prohibition of some specific behaviours and that consequences will follow for any worker not adhering to the required code of behaviour. In some services, staff will be required by their employers to have police checks prior to being employed.

### Types of law — legislation and common law

Legislation is law made through Acts of Parliament. These clearly define what is legal and what is illegal. Examples are the Workplace Health and Safety Act 2011 Trade Practices Act 1974 (Cth). Note how both the year of enactment and the jurisdiction are (usually) included in the citation.

In contrast, common law is what is known as 'judge-made law', as the decision about responsibility is decided using legal precedence and community attitudes and expectations. It does not rely on an Act of Parliament but rather the decision is based on what is considered appropriate or not appropriate at a particular time in history.

**Common law can be defined as “judge made law”. It is sometimes also referred to as;**

1. Case law
2. Precedent law
3. Unenacted law.

Australian examples of judge made law include “Mabo” and the “Tasmanian Dams Laws”.

## **Parliament Made Law**

Parliament made law is what it says – law made in parliament; by politicians representing the people. Parliament made law is also known as:

- Statute law
- Legislation
- Enacted law.

### **Legislation is enacted to achieve one of the following:**

- Solve a problem (for example: to limit the use and possession of firearms)
- Give effect to party policy (for example; to modify the HECS scheme)
- Prevent problems (for example; Racial vilification legislation)
- Consolidate common law cases (for example, the native titles act 1993 consolidated, and gave further detail to, the common law principles articulated in the Mabo case).

Parliament made law overrides common law. It would be true to say that Parliament made law is now more important than common law. This has not always been the case. Parliament made law has certain advantages in that, unlike common law, parliament does not have to wait for a problem to arise before making a legal decision. Laws can be made to prevent a problem, rather than ruling once a problem arises.

### **Examples of parliament made law include:**

- Mental Health Act 1986
- Children, Youth & Families Act 2005 (Victoria)
- Police Powers and Responsibilities Act, 2000

Parliamentary or statutes are laws passed by the Government on behalf of the people. These take the form of Acts, which state the main principles of the law, and Regulations, which give precise directions that must be followed in order to comply with the intent of the Act. Parliamentary law is what is says – law made in parliament by elected politicians representing the people.

### **Other terms used to describe parliamentary law would be:**

- Statute law defines what is the legally-required right action in a situation, and what the penalties will be if they are not followed
- If a legal obligation is statutory, it means that it is legally punishable if you don't carry it out. For example, it is a statutory obligation in NSW/Vic for teachers to report situations where they feel a child in their care is at risk of harm. If they don't they risk a fine at least.

Legislation defines what standards are needed to be followed.

### **This can be seen when legislation may:**

- Solve a problem (e.g.: to limit the engine size of a car for 'p' plate drivers to help reduce the number of deaths for this group)
- Give effect to government policy (e.g. Taxation is calculated on income and must be paid by everyone to fund capital works)
- Prevent problems (e.g. Recent changes for witnesses in rape cases only giving evidence in courts on one occasion)
- Consolidate common law cases (e.g. Local councils being responsible to sign all dangerous areas to minimise compensation claims).



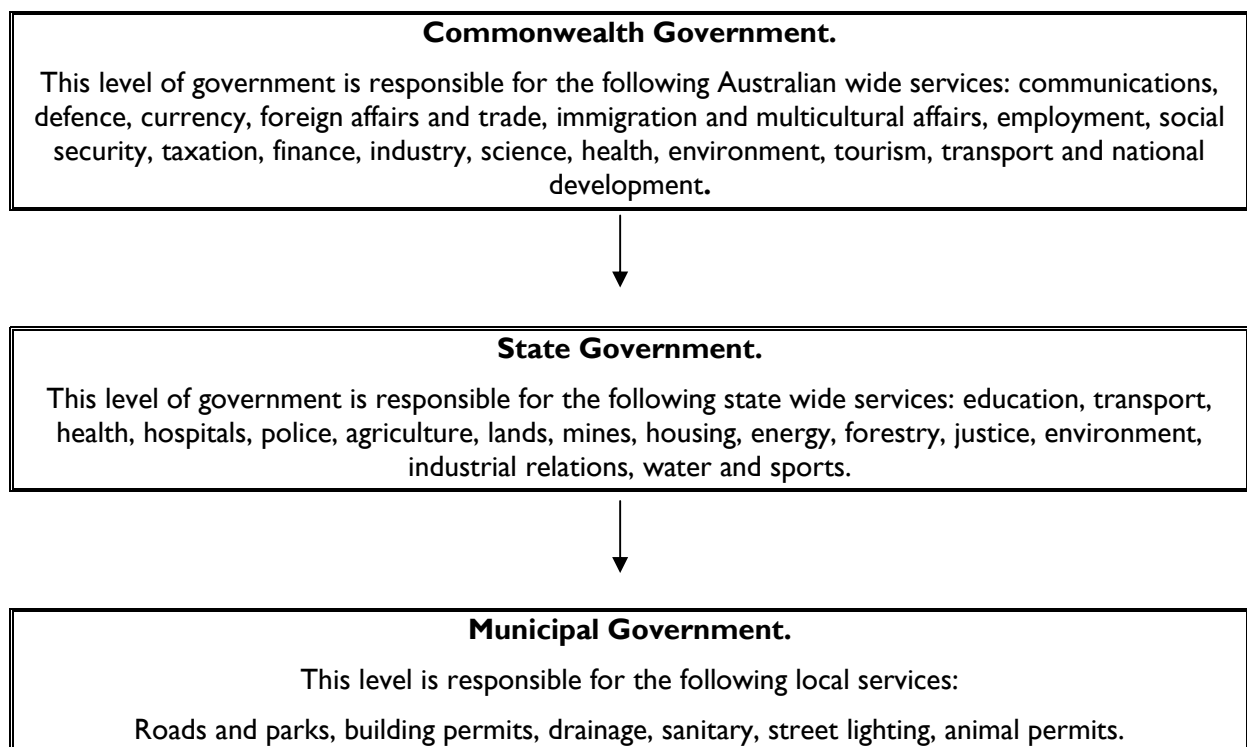
### **Enacted Law:**

- This when the law has been discussed and voted and approved through Parliament, when it has been passed this is when it becomes enacted law
- Parliament can enact law before a problem needs a legal decision.
- Federal and state laws are determined by the Australian Constitution which outlines the way the nation operates so that everyone knows their responsibilities and how they should perform.

### **The Australian Federal system of Government ensures:**

- The Commonwealth Government has power to make decisions that directly affect the way the nation is governed. E.g. Law making
- The judicature (the court system) is administered
- The ability to make changes to the Constitution

**The three levels of government within Australia and their role can be summarised in the following:**



It is important to understand the differing levels of government and each level's laws and/or requirements that will affect the way you perform your work role. Let's see what requirements you need to be aware of to ensure you are fulfilling the requirements for your position.

When we drive a car we all have legal obligations and these are detailed in Safe Driving Booklets that we study before our driving test. The original road rules come from the Transport (General) Act 1999 and the Road Transport (Safety and Traffic Management) Act 1999 and the Regulations made under those Acts. If we don't meet the statutory and regulatory requirements we will be punished by fines or prison sentences.

The road rules are very clear about what is expected from drivers under various conditions. This is similar to the regulations and different expectations of workers in home-based services to those in facilities. We have a legal obligation to drive safely so as not to put other drivers in danger.

You have a legal obligation to work to the statutory and regulatory requirements in the community care sector to maintain a standard of care. You are responsible for the people in your care and you must make sure the environment they are in is safe and adheres to the statutory and regulatory requirements contained in Acts and regulations. This will guide your decisions about what is 'right' for those clients in your care.

This summary will be helpful to the support worker. For example, if we are looking at statutory obligations regarding health, we are probably looking at State legislation. However if someone living with HIV/AIDS is refused a service or discriminated against in some way then an understanding of Federal legislation would be needed. Allocated parking spaces for those people incapacitated by HIV/AIDS needing wheelchair access would be covered by local government legislation. As you can see it is useful to be familiar with relevant Federal, State and local government legislation as this will enable you to provide care and assistance that is appropriate for your client.

### **The Court Hierarchy and role of the individual courts**



Our court system, like most official systems, is hierarchical in structure. The High Court, which is the final court of appeal in Australia, is at the top of the structure. The Victorian Magistrates' Court/Children's Court is at the bottom. In between are the County and Supreme Courts of Victoria. For the overall structure of State and Commonwealth courts, see the diagram below.

### **The Federal Court**

The Federal Court has both original and appellate jurisdiction. The Court hears civil cases relating to federal matters such as: Taxation, Customs, Trade practices, Industrial Law, Bankruptcy, Immigration, Copyright, Sexual and Racial Discrimination and Administrative Law.

**It is quite common to find the Federal Court is given exclusive jurisdiction in these areas:**

- **Appeals:** The Full Federal Court (three Federal Court judges) hears appeals from a single judge of the Federal Court. Decisions of the Full Federal Court may be appealed to the High Court if the High Court gives "leave" to appeal in the particular case.
- **Class Actions:** The Federal Court is able to hear class actions. Class actions involve seven or more people who have claims against the one defendant arising out of similar circumstances. Class actions enable a group of people to combine their resources to take action against a party that may be larger and possess more financial resources than any one individual.

## **The Family Court of Australia**

The Family Court administers Australia's family laws. In Victoria a Family Court is located in Melbourne, Dandenong and circuit sittings are held periodically in major country centres. The Court deals with: Divorce (although all applications are filed in the Federal Magistrates' Court), the division of property and maintenance, Child related matters and determining parenting orders and plans. The Full Family Court (3 Family Court judges) hears appeals from the Family Court. From the Full Family Court, a party may appeal to the High Court if given leave to appeal.

## **Federal Magistrates' Service**

The Federal Magistrates' Court Service deals with a range of less complex federal disputes previously going to the Federal and Family Courts. The Court provides a quicker, cheaper option for litigants and eases the workload of both the abovementioned Courts. The Court hears less complex areas of law but its jurisdiction is concurrent with the Family and Federal Court.

An example of the matters that may be heard in the Federal Magistrates' Court include: Applications for the dissolution of marriage, family law property matters less than \$300,000, spousal maintenance and parenting orders where parties consent to the matter being heard in this Court. The Federal Magistrates' Service also has jurisdiction over: Consumer protection, review of administrative decisions, bankruptcy matters and anti-discrimination complaints not satisfactorily resolved by the Human Rights and Equal Opportunity Commission.

**Supreme Court:** The Supreme Court is the highest court in the Victorian hierarchy. The Supreme Court is divided into 2 divisions – the Court of Appeal and a Trial Division. The Court has jurisdiction to hear all civil and criminal matters not excluded by statute. In practice, the Supreme Court generally only hears matters that cannot be heard in the lower Courts.

**Trial Division:** The following are some examples of cases the Supreme Court may hear: Criminal trials for the most serious indictable offences such as Treason, Murder, Attempted Murder, Manslaughter and Arson causing death. It also has the power to hear building disputes that involve personal injuries and commercial disputes where the claim exceeds \$200,000. The civil jurisdiction of the Supreme Court is unlimited in the amount of money which may be claimed and it is effectively unlimited in the subject matter of the cases.

**Court of Appeal:** The Supreme Court hears appeals from civil orders and criminal convictions made in the Magistrates' Court. The Appeals can be taken to the Supreme Court from the Magistrates' Court (on a question of law) and from the County Court on both civil and criminal judgments. The Court of Appeal may hear appeals from a decision of a single judge of either the Trial Division of the Supreme or County Court. Appeals from decisions of the Court of Appeal are heard by the High Court, but only after that Court has granted leave to appeal.

**County Court:** The County Court forms the middle tier of the Victorian Court Hierarchy. It has original and an appellant jurisdiction. In practice, the County Court hears all indictable offences, with the exception of murder, attempted murder and treason. The County Court has the jurisdiction to hear civil matters including claims for personal injuries up to the value of \$200,000, claims against a council or municipality and other civil actions outlined in statute law. County Court judges are not limited as are Magistrates in imposing terms of imprisonment. They may impose any sentence, subject to the general principles of sentencing and the maximum penalties set out by the legislation which establishes a certain act as a crime. Appeals from the Magistrates' Court and Children's Court are heard in the County Court.

**Magistrates' Court:** The Magistrates' Court is the lowest level of the Victorian Court hierarchy in terms of jurisdiction.

**It incorporates:**

- The State Coroner's Office
- Victims of Crime Assistance Tribunal
- Work Related Injuries
- PERIN Courts.

There are over 50 Magistrate's Courts in Victoria. The Magistrate's Court deals with over 90% of the criminal and civil matters that proceed to Court. The *Crimes Act* and the *Magistrate's Court Act* outline the matters that can be heard by the Magistrate's Court.

It has the jurisdiction to hear all summary offences and some indictable offences. Common summary offences include: being drunk and disorderly, wilful damage, resisting police, loitering offences and transport offences. Some of the serious (indictable) offences that may be heard in the Magistrate's Court are: theft, robbery or burglary where the value does not exceed \$25,000, recklessly causing serious injury, assaults, indecent assault and various sexual offences (excluding rape). It also has the power to hear civil matters – up to the value of \$100,000.

However, it should be noted that even if an indictable offence may be heard in the Magistrate's Court, the defendant or the prosecutor may request that it be heard in the County Court. The prosecution would normally do this if the limited penalties available to a magistrate did not reflect the seriousness of the alleged offence. The Magistrate's Court cannot impose jail sentences of more than two years for one offence, more than three years for drug offences or more than five years for multiple offences (Section 113b, Sentencing Act 1991). Committal proceedings are also held in the Magistrates' Court.

**Coroners' Court**

The Coroners' Court is basically a Magistrate's Court with special tasks to perform. It is a court of inquiry and its role is set out by the *Coroners' Act 1985*.

**A Coroners' inquest must be held in certain circumstances, including where:**

- The Coroner suspects homicide
- The deceased immediately before death was a person held in police custody, or in prison, or was
- Under the care of the Department of Human Services; and,
- The identity of the deceased is unknown.

The Coroner may hold an inquest into a death if he or she believes it is desirable to do so. Any person may request that the Coroner hold an inquest into a death. The Coroner may refuse to do so. The Coroner may comment on any matter connected with the death of a person which relates to public health and safety or the administration of justice. This power enables the Coroner to make recommendations for change to prevent future deaths.

**Victims of Crime Assistance Tribunal (VOCAT)**

Established by the *Victims of Crime Assistance Act 1996*, VOCAT replaced the Crimes Compensation Tribunal and provides access to a variety of counselling, referral and information services to victims of crime. The Tribunal operates out of most Magistrates' Courts. VOCAT considers applications for financial compensation and assistance for victims of crime. Applications to the Tribunal must be made within 2 years of the offence.

## **The Children's Court**

Prior to the establishment of the Children's Court in Victoria in 1906, children were dealt with in the same courts as adults, and received the same penalties as adults; that is - execution, floggings, lengthy periods in custody and public shaming. For example: children nine years old were serving sentences for theft, in Pentridge Prison in Melbourne in 1899.

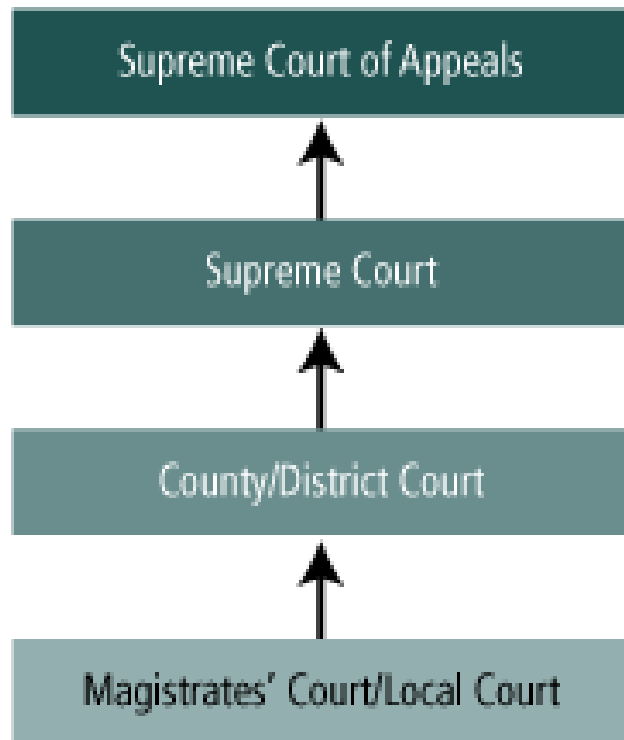
The 1930's saw a number of significant developments in the Children's Court. A specific facility was created and the first stipendiary Magistrate and two stipendiary Probation officers were appointed to the Court. The Court initially sat half a day a week; however by the end of 1939 this had increased to two sittings a week. A new Children's Court was established in Melbourne in December 1960.

In 1982, the Victorian Government established a Committee chaired by Professor Terry Carney with the task of reviewing child welfare practice and legislation. The Committee handed down its final report in 1984 and made a number of recommendations affecting the structure of the Victorian Children's Court. Victoria introduced new legislation in 1989 – the Children & Young Persons' Act. This was considered to be the turning point in terms of the treatment and care of young people in Victoria.

### **The Act put many of the Carney Committee's recommendations into practice such as:**

- The establishment of separate divisions of the Children's Court – the Family (Protective matters) division and the Criminal division.
- Opening the Court to the public
- Increased the minimum age of criminal responsibility to 10 years
- The establishment of a sentencing hierarchy for Children's Courts and legislated the requirement that "a Court cannot impose a sentence at one level unless it is satisfied that a sentence at a lower level is not appropriate"
- Placing clear and increased emphasis on the rights of the child and families, the accountability of those working within the juvenile justice and child protection system and emphasised the importance that should be given to cultural values, education, employment and the family when dealing with young people and children.

## Western Australia Court hierarchy



Courts in Western Australia are administered by the Department of the Attorney General through the Court and Tribunal Services division. The judiciary presides over the courts and delivers justice to the community through sentencing in criminal cases and rulings in civil cases. The judiciary - which includes all judges and magistrates - is the third, independent arm of government. Court and Tribunal Services supports the judiciary by providing administration and resources.

Court and Tribunal Services' mission, in partnership with the judiciary, is to *'provide a court system which is responsive to community needs for access to justice'*. It facilitates speedy and affordable court and tribunal processes that also recognise the independence of the judiciary.

There are different levels of courts in Western Australia, with the highest court being the: Supreme Court. Courts operate at more than 123 locations in the State. All court sittings and tribunal hearings are open to the public, except where laws dictate otherwise. Appropriate interpreter services are provided upon request at no cost to the defendant or witness.

### Court history

Western Australia's judicial system is as steeped in history as the State itself. When Captain James Stirling and his settlers arrived in Western Australia in 1829, one of their first activities in establishing our colony was to set up a judicial system. They did this under the authority of the British Secretary of State for the Colonies.

Eight justices of the peace were engaged to address all justice matters from administration to handing down punishments for crime. Australia had not developed its own laws at this time, so British law was used. The first court hearing in Western Australia was held in July 1830. Initially, only four months each year were allocated for court hearings. However, by 1834 there were enough cases to justify the court opening every month.

### Supreme court of appeals

To go above the Supreme Court, ie for a higher appeal, a case must go to the High Court of Australia, which is the ultimate Australian court from which there is no further appeal. Documents held at the Supreme Court are court records relating to matters started in either the criminal, civil, appellant or probate jurisdiction. The inspection of such documents is available in accordance with Order 67, Rules 10 and 11 on payment of the prescribed fees.

## **W.A Supreme Court**

The Supreme Court is the State's highest court, with responsibility for both criminal and civil matters. It is also the main appeal court of the state. The Supreme Court is divided into two divisions - the General Division and the Court of Appeal. The General Division deals with serious criminal charges, such as murder, armed robbery and serious breaches of Commonwealth drug enforcement laws. Generally, it hears civil cases where the amount involved in the dispute is more than \$750,000.

The General Division also deals with probate (including disputes over wills), Admiralty (disputes involving ships), disputed elections and applications under the Corporations Act. The Court of Appeal hears appeals from single judge decisions of the Supreme Court and from lower courts and various tribunals.

## **W.A District court**

The District Court is the intermediate court in Western Australia, presided over by a District Court judge. The District Court deals with serious criminal offences (for instance, serious assaults, breaking and entering, fraud) except those where the maximum term of imprisonment that can be imposed is life. A jury of 12 community members decide whether a person accused of a criminal offence is guilty or not guilty. An accused person may choose to have a trial by judge alone, and not by a jury.

In civil law, the court deals with matters generally involving claims up to \$750,000. It has unlimited jurisdiction in claims for damages for personal injuries and it has exclusive jurisdiction in regard to claims for damages for injury sustained in motor vehicle accidents. Civil appeals from the Magistrates Court and some tribunals are heard by the District Court. All appeals from the District Court are heard by the Court of Appeal. Documents held at the District Court are court records relating to matters commenced in either the criminal or civil jurisdiction. The inspection of such documents is available in accordance with Order 67, Rules 10 and 11 on payment of the prescribed fees.

## **Magistrates Court /local courts of Western Australia**

The Magistrates Court amalgamated the former Court of Petty Sessions, Local Court and Small Claims Tribunal into a single court dealing with civil and criminal matters. The amalgamation has provided greater access to, and more efficient use of, the court system, by simplifying court processes, resolving cases more quickly and with less expense.

The Magistrates Court of Western Australia deals with adults, aged 18 or over, required to appear in court after being charged with a criminal offence. Some criminal offences are known as 'simple offences' and will be dealt with in the Magistrates Court. More serious criminal offences, known as 'indictable offences', commence in the Magistrates Court. While some of these offences (known as 'either way' offences) may be dealt with in the Magistrates Court, the most serious offences must be sent on to be heard in the District or Supreme Courts.

The Magistrates Court deals with civil matters involving claims up to \$75,000. For minor cases, the jurisdictional limit of the Magistrates Court is \$10,000. The Magistrates Court also deals with consumer/trader claims of \$75,000 or less, and minor case consumer/trader claims of \$10,000 or less.

## **Children's Court of Western Australia**

The Children's Court of Western Australia deals with offences alleged to have been committed by young people aged 10 to 17 years. The Perth Children's Court is located at 160 Pier Street in Perth; however, children's court cases are also heard in other courthouses throughout the State. The Court also deals with protection and care applications for children under the age of 18 years.

## **Family Court of Western Australia**

The Family Court of Western Australia is presided over by judges and magistrates. The court is vested with State and Federal jurisdiction in matters of family law and deals with divorce, property of a marriage or de facto relationship, parenting orders and other matters relating to children, maintenance, adoptions and surrogacy. The Department provides its administrative and logistic support, but the cost of operating the court and salaries of staff are actually paid from Federal funds. Many crimes are committed by people with significant drug related problems. Drug Courts aim to break the cycle of drug related problems and offending by facilitating treatment programs as part of the court process.

### **Drug court**

The Perth Drug Court operates in the Perth Magistrates Court and accepts referrals from the District and Supreme Courts, as well as other Magistrates Courts around the State. The Children's Court Drug Court operates in the Perth Children's Court. Other court programs addressing drug related problems are available statewide for people whom Drug Court may not be warranted.

#### **The Drug Court aims to:**

- Support Drug Court participants in addressing their drug related problems and associated lifestyle
- Reduce the imprisonment of those with drug related problems, by addressing those problems that are integral to offending behaviour
- Reduce post-treatment supervision requirements for participants of the Drug Court by having them address relevant requirements at the earlier stage prior to final sentencing.

### **Start Court**

The Start Court is focused on providing more options for people appearing in court who have a mental illness, and more capacity for the court to respond in ways that support people and also address offending behaviour.

#### **Operating out of the Magistrates Courts at Perth, the Start Court aims to:**

- Increase an individual's connection with treatment support services and re-engage individuals with the most appropriate services to help manage their mental illness
- Find a therapeutic solution to address offending behaviour in a manner which helps an individual manage their mental health issues and make positive changes to their life to help reduce the likelihood of future contact with the criminal justice system
- Increase public safety and ensure help with mental health issues is available.

### **Office of the state coroner**

When a person dies apparently from non-natural causes or where the cause of death is not known, a doctor cannot issue a death certificate and the Coroner must be advised. Once a report of death is received, usually from police, doctors or hospital authorities, the Coroner has legal control over the body of the deceased person, and he must establish the:

- Manner in which the death arose
- Cause of death
- Particulars needed to register the death
- Identity of the deceased.

All members of the WA Police Service are coroner's investigators and personnel from the Chemistry Centre (WA) and the Department of Health support the Coroner in the task of investigation. An inquest is a court hearing presided over by a coroner. The hearing is usually open to the public. During an inquest, witnesses are called to give evidence to enable the coroner to make a finding into a death. Family of the deceased and people interested in the circumstances of a death may, at the Coroner's discretion, ask questions of witnesses or be represented by another person.





## One

### Identifying, accessing and interpreting sources of information about the legal requirements that apply to the work role

1. Why do we need laws?

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2. Outline the legal system in Australia.

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3. In your own words, explain what the following terms mean, in the context of the information presented in this learning guide. Explain each term in briefly in the space below.

a) Statute Law.

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b) Common law.

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c) Civil matters/civil law.

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d) Parliamentary law.

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## Identifying the scope and nature of own legal responsibilities



Community service workers may provide care in a range of environments such as a client's home or in a facility such as a day centre, hostel, independent living centre or a residential care facility, children's services centre or the carer's home. They have close contact with a diverse range of professionals such as registered nurses, diversional therapists, physiotherapists, occupational therapists, doctors/specialists, dentists, dieticians and pharmacists. They also work with support staff such as interpreters, support workers, carers, volunteers, domestic service and maintenance workers.

As a community service worker, you must have a clear understanding of your role, responsibilities and level of authority, and how you work with others. This helps you provide client-focused care within a supportive team environment. You have a duty of care to work in an ethical way and in accordance with your employer's policies and procedures.

### Understanding the obligations of your role

You must have a clear understanding of the legal framework relevant to your role. This knowledge helps you work safely in a community services environment while supporting clients' rights. Your responsibilities are documented in your position description (sometimes known as a job description), which is provided when you are first employed. This outlines the role, duties and line of reporting for that position. It briefly describes what the organisation expects from you and how this links to the organisation's goals and objectives. It also describes the interrelationships with others and the resources, training and experience necessary for success. As an employee, you are accountable to your employer for the duties outlined in your position description.

### Employees should familiarise themselves with:

- Relevant industrial award, workplace agreement or enterprise bargaining agreements
- Federal, state and local, government regulations that impact on their work
- Accreditation standards and audit requirements relevant to the service for which they work.

### Workplace health and safety legislation and requirements, including those relating to:

- Manual handling
- Hazardous substances
- HIV/ aids and Hepatitis B
- Workplace injury and disease recording.

As a result employees should be able to demonstrate in all work they undertake, an understanding of the legal responsibilities and obligations relevant to the organisation and to their individual work roles. It is necessary for management to provide employees with information about relevant legislation, statutory and regulatory requirements.

## **Rights and responsibilities**

In every organisation, whether it is public or private, small or large, everyone has rights and responsibilities. For example, an employer has a right to expect certain levels and standards of performance from employees; and employees have a right to expect certain conditions from employers. The employer is responsible for the successful operation of the organisation; employees must complete their work tasks to ensure the operation runs efficiently.

### **Employees have the right to:**

- A safe workplace
- A workplace free from harassment and discrimination
- Access to a grievance (complaint) process
- Wages in accordance with the award rates
- Clear direction of their duties
- Receive advice and training
- Not be unfairly dismissed.

### **Employment contracts**

A contract is a legal undertaking for any number of reasons, whether it is a marriage contract, a business contract, or a mortgage contract. A contract may be formal written documents, or a formal verbal agreement. Written contracts are clearer, more able to be verified, and therefore, safer and easier to uphold. While verbal contracts are legal, they need to be proven to be true and valid agreements. This may not be easy to do.

In the light of EEO (Equal Employment Opportunity), Anti-discrimination, and Industrial relations legislation that impact on the employment relationship between employers and employees, your employment contracts need to be written documents. They should be easy to understand, with a minimum of legal jargon, and able to be read and understood by both parties to the agreement, then signed and dated, and a copy retained by each party. If you have, or have had an employment contract, you might think about whether it met all of these criteria. Employment contracts under the Workplace Relations Act 1996 can be either individual employment contracts or collective contracts. The choice is a matter of need and negotiation between the parties involved.

### **Employment contracts may cover:**

- Benefits
- Bonuses
- Confidentiality agreement
- Discipline policy and procedures
- Duties
- Hours
- Intellectual property
- Leave entitlements
- Overtime requirements
- Promotion policy and procedures
- Salary/wages
- Superannuation
- Supervision
- Work location .

**Employment arrangements (terms of employment):** The conditions under which people may be employed are varied and include the following:

**Permanent or casual:** Permanent employees work regular, agreed hours on an ongoing basis. Casual employees work on an 'as needed' basis, eg: at busy times or when specialised skills are required, but not all the time.

**Full-time or part-time:** Full-time employment is generally accepted to be in the region of 37.5 to 42 hours per week, every week. Part-time employees may work from five hours a week upwards. Generally, permanent part-time staff work regular, agreed hours each week. In addition, employment arrangements may vary depending on the arrangements under which a person is employed. These are outlined below.

### **Award conditions**

Awards are governed by a number of different bodies, including State and Federal governments. The awards state the terms, conditions and wage rates for given occupations, eg: nursing, clerical positions. These awards are a form of protection for workers, as they set down minimum conditions that must be met by employers in employing people to carry out certain duties. In some instances, a State award and a Federal award may exist for the same occupation. Where there is conflict between these, the Federal award will always take precedence. Awards vary from industry to industry, but some provisions are common to most of them.

**The most common provisions are set out below.**

**Casual workers** are generally employed for a limited number of hours per week and are paid on an hourly basis. These workers have no entitlement to paid sick leave or paid annual leave, but are paid at a higher rate per hour (usually about 20% more) than permanent workers to compensate for the lack of leave entitlements. Having said that, in most States, casual workers are entitled to long service leave if they stay in a job long enough to qualify for it.

**Permanent workers:** who are covered by awards have a range of entitlements.

**Permanent full-time workers:** are entitled to annual paid leave of four weeks or more per year. In addition to their normal pay for these weeks, many receive a loading of 17.5% paid at the time of taking their leave.

**Permanent part-time:** workers receive the same benefits of those who are employed full time, but on a pro-rata basis. They will also be entitled to four weeks or more paid leave, but at their normal part-time rate of pay.

The employer may have the right to dictate when leave can be taken as long as the worker is given two weeks' notice. This will usually occur in industries when there is a 'shut-down' period each year, eg: building, or when there is a very slack period, eg: tourism. At the time of writing, paid sick leave allowance varies from state to state. Under the State Awards in South Australia, Northern Territory, Western Australia and Tasmania, ten days is the normal entitlement. Under Commonwealth Awards and State Awards in New South Wales, Victoria and Queensland the normal allowance would be five days in the first year rising to eight days in subsequent years. In most cases, sick leave is cumulative if not taken.

**Public holidays:** are normally paid if they fall on the day which is usually worked, which most do. In South Australia, for example, there are usually 11 public holidays, although not all fall on weekdays. Awards for given industries need to be checked with regard to public holidays, as some carry special provisions.

**Long service leave:** provisions, at the time of writing, also vary between the states. For workers covered by State Awards in South Australia, the entitlement is 13 weeks paid leave after 10 years continuous service with one employer. Under Commonwealth Awards, and under State Awards in Victoria, Western Australia, Tasmania and Queensland, the entitlement is usually 13 weeks after 15 years continuous service. New South Wales gives two months after 10 years. Most states provide for pro-rata payment if the worker leaves after completing two-thirds of the period of service. However, the entitlement may not apply under certain circumstances.

**Maternity leave:** is not paid leave, although some awards do have up to 12 weeks paid leave (eg: six weeks before the birth and six weeks after). In most awards there is the right to return to a job after a period of unpaid leave. The period can vary from six weeks to 12 months, depending on the Award. This is changing in some sectors to include more entitlements, longer leave time and in some cases, paid leave.

**Parental leave:** is usually available to an employee after at least 12 months continuous service to care for a new baby or an adopted child. You can have up to 52 weeks parental leave, unless your employer agrees to a variation, including the period taken as unpaid leave leading up to and including the birth. It is usual for a pregnant woman to leave work at least six weeks before the expected birth date. At least six weeks after the birth is the usual time taken before any return to work, unless circumstances dictate otherwise, eg: post-natal depression, a child's illness or complications. Remember, both parents are entitled to parental leave when eligible and except for one week at the time of birth, you cannot both be on leave at the same time. Some awards and agreements may allow for some paid parental leave.

Other than for sickness, you should not be required to use **sick leave**, and whilst on leave, your seniority, any accumulated annual and long service leave, sick leave and superannuation must be preserved. You can use annual leave or long service leave if some is owing to you and that is your wish.

**Carer's leave** may be available to you under an award or agreement if you are required to take leave to look after a sick family member. This may be taken as paid leave from your sick leave and bereavement leave entitlements. If you have used all your sick leave, you may be able to take unpaid leave. Some carers may be able to use part of their annual leave entitlement to care for a sick child or other close family member.

**Bereavement leave:** of usually up to three days is available in most awards for the death of a close relative.

**Cultural leave:** for Aboriginal and Torres Strait Islander people may be available under some awards or agreements, with or without pay, to participate in ceremonial activities and cultural obligations.

**The Superannuation guarantee:** for almost all workers is an additional entitlement paid by the employer into a complying superannuation fund as is a percentage of your gross income. You can put additional funds into your superannuation fund if you wish.

**Enterprise bargaining agreements:** This is an arrangement negotiated between a single employer (which can be a group of organisations such as hospitals) and its employees. The terms and conditions will apply only to employees of that organisation who may then be employed under contract arrangements related to the agreement.

**Collective agreements:** From 1 July 2009 Fair Work Australia (FWA) takes over the role of approving collective agreements—now known as enterprise agreements. There are some changes to the matters which may be permitted in agreements (e.g. deductions from wages when authorised by an employee). The Fair Work Act 2009 (the Act) also contains a new test—the better off overall test—which will apply from 1 January 2010. This test will compare the terms of a proposed agreement against the relevant modern award to ensure employees will be better off overall. For agreements made up until 31 December 2009, the *Workplace Relations Act 1996* (the WR Act) *no-disadvantage* test will continue to apply. Collective agreements made before 1 July 2009 must be lodged with the Workplace Authority.

**Traineeship:** A traineeship is an arrangement that provides employment and training for an individual for a given period of time. Under a contract of training (COT) between the employer, employee and a nominated registered training organisation (RTO) the employment and training conditions for the trainee are set out, over a specified timeframe.

**National Employment Standards:** The FW Act creates National Employment Standards (NES), which took effect from 1 January 2010. The NES are *statutory* terms and conditions of employment and apply to all employees in the national system (defined in section 13 of the FW Act), including management employees. They are enforceable by *statute* and cannot be displaced by awards, enterprise agreements or *common law contracts*, unless specifically provided for in the FW Act.

**Sections 61 to 125 of the FW Act detail the NES. In summary the NES are:**

- a. A maximum of 38 hours per week, subject to additional hours if reasonable and the averaging of hours over a period of time (ss 62–4);
- b. The right to request flexible working arrangements for an employee in circumstances specified by the FW act, including caring responsibilities for a child. The employer must respond in writing and can only refuse on reasonable business grounds (s 65);
- c. Parental leave and related entitlements of, among other things, 12 months unpaid parental leave to care for a child (ss 67–85);
- d. Annual leave of four weeks accrued for each year of service or five weeks for shift workers, as defined (ss 86–94);
- e. Personal/carer's leave of 10 days paid per year with the possibility of further unpaid days in defined circumstances. Compassionate leave of two days per year in defined circumstances (ss 95–107);
- f. Community service leave for an employee to *undertake* a defined type of community service, such as volunteering for a fire fighting body, in defined circumstances (ss 108–112);
- g. Long service leave as provided by a pre-reform award, unless excluded by an enterprise agreement, and if there is no federal award entitlement, long service leave *legislation* will apply (s 113);
- h. The entitlement to be absent from work on the **public holidays** specified in the fw act, unless the employer makes a reasonable request for an employee to work and the employee does not have a reasonable basis for refusing (ss 114–116);
- i. **Notice of termination or pay in lieu** according to the table below;
- j. **redundancy pay** if the employee's employment is terminated:
  - i. at the employer's initiative because the employer no longer wants the job of the employee done by anyone, except where this is due to the ordinary and customary turnover of labour; or
  - ii. because of the insolvency or *bankruptcy* of the employer.

Redundancy pay periods are calculated as shown in the table below (ss 117–23); and
- k. **a fair work information statement** to be provided by an employer to each of their employees (ss 124–5).

## Duty of care

Community service workers have a responsibility to know the standards of care they are expected to meet. All clients have a right to expect safe, effective, quality care and all support workers are bound to practice within these standards.

**In giving shape to your responsibilities and ensuring a high standard of care, each support worker should be aware of the following:**

- Duties and responsibilities, as outlined in the job and person specification
- Duty of care obligations, these may vary according to experience, expertise and professional registration
- Qualifications and requirements
- Professional obligations outlined in relevant codes of practice (e.g.: Australian association of social workers ethics; job network code of practice)
- Any other obligations outlined in policy or procedures.

The concept known as duty of care refers to the obligation owed to anyone whom it is reasonably foreseeable would be injured by the lack of care of that person. For a duty of care to occur, there must be a relationship of proximity. That is, the duty may be owed to persons in specific categories, such as a doctor to a patient, or a community support worker to a client.

The principle of duty of care is both important and potentially complex. It is the responsibility of the housing support worker to deliver the highest possible care to all clients, with consideration to the social, ethical, medical and religious needs of the care recipient.

All these considerations are part of your duty of care towards the people you work with. They are safety considerations which are partly guided by thinking about any possible risks, and partly guided by regulations (eg how many staff that need to be present in different circumstances). If even one part of your safety thinking is missed, then you have not fulfilled your duty of care to the client.

Your duty of care is a legal requirement for you to act toward others with the attention that a reasonable person in the given circumstance would use. If a person's actions do not meet a reasonable standard of care, a court may consider the person negligent, and any damages resulting may be claimed in a lawsuit for negligence. The difficulty is that the standard of care required depends of the circumstances.

Duty of care covers a wide range of actions, from occupational health and safety, to the way we behave with the client. Support workers have a responsibility to determine the standard of care and levels of supervision involved in different situations, and this depends on what is reasonable for the situation and the client's needs that is involved. This is all part of duty of care.

There is a standard of care by which a support worker should practice. Guidelines for standards of care are determined by professional organisations and the employing organisation. The policies and protocols of individual facilities give details of how a support worker is to perform his/her duties. The law expects that every support worker will carry out his or her duties to a *standard*, which any reasonable person would try to meet.

### The challenge

Duty of care involves the challenge of maintaining a balance. The need to uphold your duty of care and avoid acting negligently must be considered in all decisions you make as a disability support professional.



## **Duty of care checklist**

### **Will an action be a breach of the duty of care**

- Assess the likelihood and extent of the foreseeable harm.
- Assess the likelihood and extent of the foreseeable benefits.
- Look for ways that the risk of harm can be minimised without sacrificing the benefits.
- Balance foreseeable harm against foreseeable benefit.
- Would my actions, or lack of action, be likely to result in foreseeable harm?
- What is the risk of the harm?
- How serious could the harm be? To what extent would the person be affected?
- What benefits will the person receive from taking this course of action?
- If injury is foreseeable, could I take any actions, which would minimise this injury? What precautions can I take?
- What is the purpose of this activity? Is it worthwhile taking the risk?
- Are there relevant policies or work instructions?
- What would another reasonable person do in my place?
- What can I do to support the client to make their own decisions?
- If the person is unable to make their own decisions, to what degree are their rights affected if the wrong decision is made?
- Do I know which rights and aspirations are likely to be the most important ones for this client, in this situation?
- What access to advocacy does the client need to have?

### **What is reasonable care?**

The 'reasonableness' of any action or failure to act is based on the expectations of how a hypothetical 'reasonable person' would have acted in the same circumstances. The circumstances include the potential for harm in the situation and the skills, training and experience of the worker.

- In a professional context, the "reasonable" standard is based on the average/expected professional standard
- As a community service professional, you have a duty of care to achieve and maintain a standard of skill or competency.

### **The application of professional standards can vary from activity to activity, depending on the:**

- Nature of the activity or support
- Age and cognitive ability of people being supported
- Degree of their skill and/or training in a particular activity.

The more a person with a disability depends on a support worker for their wellbeing, the more the support worker is required to do to ensure that they are not injured by their actions. For example, a support worker leaving a person with very high physical support needs unattended may be viewed as unreasonable action. However a staff member who leaves a person who has minimal support needs and was frequently left unattended may be viewed as reasonable. Sometimes we have to make decision in situations where duty of care is, or seems to be, in conflict with our ethical principles.

## **Negligence**

In some cases it is possible to be sued for being negligent, either in not applying the appropriate standard of care or through giving advice you are not sure is correct or are not qualified to give (eg: giving medication when this is not part of your job description). If you are found to be negligent in a court of law you may be sued or the service may be sued. Services have public liability insurance to cover a breach of duty of care. However individuals who act outside the job description or organisations policies and procedures made not be protected by this insurance.

### **To prove negligence four things must be proven. It must be shown that:**

1. The person being sued owed a duty of care to the other person. In the example of the support worker you have a duty of care to the client you care for.
2. The person responsible for the care did not take whatever degree of care was reasonable in the situation; eg leaving the client unsupervised for an unreasonably long period in the bathroom.
3. There is damage to the client eg. The client has fallen and broken a bone.
4. There is a link between these three things.

### **On a service level the following may indicate a breach of duty of care:**

- When services are inadequate, inappropriate or poorly administered
- When crises are not properly managed
- When risks are not properly explained.

### **All support workers can breach their duty of care when they fail to:**

- Maintain confidentiality
- Listen and respond to client complaints
- Apply appropriate occupational health and safety procedures
- Follow standards and procedures of the organisation
- Follow the standards, ethics or generally accepted principles of their profession or community.

### **The key question for all housing support workers should be –**

If I fail to take care in this situation, is it likely to lead to some sort of injury to the care recipient?

### **Injury may include:**

- Obvious physical damage
- Psychological harm
- Exacerbation of existing conditions.

Negligent conduct is conduct which, in the opinion of the court, falls below an acceptable standard. Negligence is the omission to do something which a reasonable person, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable person would not do.

Neglect consists of the deprivation by a carer of basic necessities such as food, liquids, medication or services that are necessary for maintaining physical or mental health. Neglect may be active or passive in nature. This distinction is needed to avoid some of the potential confusion, between abuse and neglect. For an action or in-action to be judged negligent, it is not necessary to show any intention on the part of the housing support worker to cause harm. The fact that the support worker acted with the best of intentions does not prevent their actions from being negligent.

**Once cases of neglect have been identified, the next step is intervention. Intervention strategies can involve a wide range of services including:**

- Legislative and law enforcement agencies
- Education and counselling
- Health and financial services, emotional and physical support
- Family and institutional care
- Advocacy and guardianship.

Fulfilling your duty of care means thinking ahead, knowing your legal obligations and considering what would be considered reasonable in the situation.

**In order to think carefully about what is reasonable ask yourself:**

- What can I reasonably do to ensure that the clients are safe?
- What would my co-workers or manager expect me to do?
- What does the law (either directly or through service policies and procedures) direct me to do?

To fulfil your responsibilities within the course of work, be prepared. Planning activities means that you will be prepared for anything that might happen. You can also think about what might go wrong and have some back-up plans.

## **Dignity of risk**

Associated with duty of care is the concept of dignity of risk. Dignity of risk refers to a person's right to experience all that life has to offer, such as learning a new skill or taking part in an activity that may entail some element of risk, but has benefits that might include gaining greater self esteem and independence.

Most people with disabilities wish to lead lives which are as close as possible to that of people who do not have a disability and this inevitably involves taking some risks. Courts and the law of negligence do not, therefore, expect disability workers to shield their clients from all possible risks. They do, however, expect workers to take reasonable care (to be sensible and cautious) in their work. This concept arises out of the key principles of the Disability Services Act. For example 'People with disabilities have the same rights as other members of Australian society to realise their individual capacities for physical, social, emotional and intellectual development' (Parsons, 1997). It can, however, pose concerns and dilemmas for staff. Value clashes between clients and workers also can play a role here as well.

## Maintaining Privacy and confidentiality



### Victorian Privacy Laws and Who They Concern

Victoria's privacy laws regulate how Victorian government bodies use and distribute personal information in Victoria. The *Information Privacy Act 2000* and the *Health Records Act 2001*, together with some other general laws, outline the collection, use, disclosure, transfer, access, correction and disposal of personal and health information.

The Department of Human Services and any contractors working for the department are bound by these laws when handling any personal and health information. These Victorian privacy laws complement the federal government's *Privacy Act 1988*, which regulates how federal government bodies and most private sector organisations use personal information.

### What information is covered by Victoria's privacy laws

The *Information Privacy Act* regulates how the Victorian public sector, statutory bodies and local councils use 'personal and sensitive information' in the state. Under the legislation, personal information is any recorded information about an easily identified living person, and includes work related information or images. Sensitive information can include information about a living person's race, ethnicity, sexual preferences, criminal record, political opinions.

Information about anyone's physical, mental or psychological health, whether or not they are living or deceased, is covered by the *Health Records Act*. The legislation regulates the way health information is handled in the public and private sector.

### Organisations affected by privacy laws

#### Some organisations that are bound by privacy laws include:

- Government departments and administrative offices
- Statutory authorities
- Municipal councils
- Government appointed boards and committees
- Government owned companies
- Universities and TAFE colleges
- Public hospitals
- State-funded residential care
- Health services contractors
- Private correctional service providers.

## **People and organisations who may not be covered by privacy laws**

Certain organisations or individuals may not be covered by Victoria's privacy laws.

### **Some of these include:**

- Under the Information Privacy Act someone who's deceased loses their right to privacy, although that person's health information is protected under the Health Records Act
- Members of Parliament
- Media organisations
- Courts and tribunals when performing their functions
- A registry or other office associated with a court or tribunal
- Publicly available personal information, which includes annual reports, anything kept in a library, gallery or museum, a public record under the Public Records Act 1973, or archives in the Copyright Act 1968
- Law enforcement agencies are exempt from certain areas of the Information Privacy Act and Health Records Act when performing their law enforcement duties
- Health information that has any connection with an individual's personal, family or household affairs.

## **Client confidentiality**

Community services workers regularly work with sensitive information that is communicated in confidence. Confidentiality is a fundamental component of service provision. It safeguards client privacy and promotes trust between service users and staff.

### **As a general rule, information should be kept in confidence, with the following provisos:**

- Where a client is in danger of physical or sexual abuse. In such cases, the laws relating to mandatory reporting apply
- Where a client's health or safety is in danger.
- Where a client's condition or circumstances create a danger to others.
- When giving evidence in Court.

## **Good practice**

Client confidentiality is a complex issue. There are many instances where we are asked to use our professional judgement in determining the degree of client confidentiality.

The following examples illustrate the potential complexity when dealing with client confidentiality. Is confidentiality with the worker or with the agency?

- A client who complains that a worker has passed information on to their supervisor in a formal supervised setting (such as a Mental Health facility)
- A parent who wants information from the agency about their son, who is 16 and has run away from home
- An elite police unit requesting client information immediately over the phone
- A client who approaches a worker after hours in the local supermarket and starts talking in a loud voice about another client
- The worker who bumps into a client in a public place,

Each of us will be faced with professional dilemmas. We will resolve these dilemmas through a variety of means – our own study and reflection, formal supervision, informal debriefing, case management experience and by referring to organisational policies and practice standards. An organisational approach to client confidentiality that is both transparent and widely known will go a long way towards resolving client confidentiality issues.

**The effective organisational approach has the following characteristics:**

- A clear client confidentiality policy
- Policy made known to both staff and clients
- Outlining the circumstances under which client confidentiality might be breached. This will include statutory and professional obligations
- The organisational parameters of client confidentiality
- Referring on, within and outside the organisation. What are the parameters of client confidentiality in these situations? Does the organisation seek permission from the client before passing on information? If so, what are the means for approving such transfers of information?



## Two

### Identifying the scope and nature of own legal responsibilities

1. Obtain a job description or job specification for the work role you are currently performing. You may need to ask your employer for a copy of this document. Discuss with fellow employees and identify legislation that relates to your job specifications. You can also search via the internet using the Google search engine <http://www.google.com.au>. Make a note of your findings.

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2. Provide details of the WHS legislation and regulator for your State/Territory.

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3. Research the regulatory requirements which apply to your service.

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## **Fulfilling duty of care responsibilities in the course of practice**

4. What do you think are the key principles of duty of care?

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5. Give an example of how you demonstrate duty of care in the workplace?

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6. Terry, who you support a few hours a week, is drinking large amounts of alcohol and driving his electric wheelchair around town. As his disability is physical, there are no capacity issues, so Terry is fully aware of what he is doing.

What duty of care do you have with Terry in this case and how can you balance this with his rights?

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7. What actions will you take with regards to Terry's behaviour in this situation and who would you discuss the situation with?

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**Write your response to the following question.**

**Case study**

Michael Smith is always supervised when getting on and off the centre's bus as he has poor balance and is unsteady on his feet. Staff have to be vigilant in their supervision as Michael likes his independence and has been known to try and get out of the bus by himself.

On a previous occasion Michael tried to get off the bus before a staff member was ready and it was only through the quick reflexes of the bus driver that he did not suffer an injury. One day the worker who has taken Michael, along with the other members of the group on an outing gets off the bus first to talk to the driver, leaving Michael and the others on the bus. Michael tries to get off the bus by himself, falls down the steps, and breaks his arm.

8. Is the worker is negligent and, if so, why?

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9. Give an example of a time you have seen a client or worker neglect to take the necessary care or action to avoid harm?

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10. What could you do in this situation?

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11. Provide an example of a situation where you have had to balance your duty of care with the dignity of risk. What questions did you ask your client to help them make an informed decision?

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## Maintaining Privacy and confidentiality

12. Why do you think that confidentiality is so important in the client/worker relationship?

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## Limits of confidentiality

### Case study

Kevin is a 36-year old man who has a lengthy history of heroin use. He has been staying at the rehab that you work at for the past week. He has been at the rehab on two previous occasions, the last time he spent several months going through the program and seemed to have been progressing well. He left to move into a halfway house and relapsed. During his last stay you formed a close working relationship in which he was able to discuss his thoughts and feelings openly and with some degree of honesty.

During a chat in the garden, as you were working together yesterday, Kevin made the comment that 'life wasn't worth living', that 'it was all too much' and 'I'm shit, just a junkie. No one will miss me'. When you tried to gently challenge this thinking, Kevin became evasive, and would not assure you that he was OK. This behaviour is very uncharacteristic, in fact, you could not remember him ever speaking like this before and you are genuinely concerned for his safety.

13. Is this information that you should share with anyone else? If you did decide to share it, who would you share it with? What would be your reason for sharing it?

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## **Adhering to legal requirements in work practice according to workplace policies and procedures and scope of role**



### **Legislation**

Community service organisations and their employees will need to comply with legislation, regulations and statutory requirements relevant to:

- The prevention of discrimination
- Anti-harassment
- Privacy (National Privacy legislation and principles)
- Equal Employment Opportunity (EEO)
- Freedom of information
- Access and equity
- Social justice
- Mandatory notification
- WHS legislation.

Legislation related specifically to aged care, child care, palliative care, youth services and to the care of people with disabilities etc will be relevant according to the community service sector in which the organisation operates. Workers also need to know their rights and responsibilities under the industrial legislation that applies in their state or territory. Industrial legislation, statutes and regulations impact on work conditions, wages, working hours and the obligations of employers and employees.

Work practices should be constantly monitored to ensure compliance and as an aid to improve efficiency. When coordinating and performing in the work environment, managers, supervisors and community service employees must ensure that the services provided meet identified client needs and uphold client rights. They must also be aware of their legal and ethical responsibilities with regard to workplace relationships and employee rights.

### **Information**

Employees must be provided, by the management of the work organisation, with information about their legal and statutory responsibilities and obligations. They must remain up-to-date with legislation and with any organisational changes that affect the parameters within which they will work.

Information might be delivered to employees via in-house training, at staff meetings, via intranet, web pages, and using memos and emails as communication tools. Files containing the information that employees will need, can be held in electronic or hard copy.

Documented information relating to legislation, regulations and statutory requirements should be available from the Human Resource (HR) department in the organisation, from the internet or government printers. This information must be current, relevant and reliable.

By ensuring that employees understand the legal responsibilities and obligations applicable to the workplace it becomes possible to set standards to which employees must adhere. KPIs (Key Performance Indicators) should be set and agreed upon with employees, so that all workers are aware of the standards to which they are expected to perform. In their work performance and in their interactions with clients, management, workmates and other stakeholders, employees must demonstrate understanding of and compliance with their legal responsibilities and with the key statutory and regulatory requirements relevant to their role and to the service sector in which they work.

### **Work Health and Safety 2011**

Work health and safety is the responsibility of everyone. Your employer has a duty of care for occupational health and safety to provide a safe working environment for workers and clients. All employers are required to consult with staff on any issues which may affect their health and safety.

Under the Work Health and Safety Bill 2011, each state and territory regulates its own health and safety legislation. There should only be very slight variations to that legislation between the states and territories. All states and territories and the Commonwealth have worked together to develop and implement model Work Health and Safety (WHS) legislation as the most effective way to achieve harmonisation of WHS laws in Australia. By reducing costs and eliminating unnecessary administrative processes, harmonisation is designed to make it easier for workers and for employers who conduct business across multiple states.

### **Disability Discrimination Act**

The Disability Discrimination Act 1992 prohibits discrimination against people with a disability in a range of areas including transport, education, employment, accommodation and public premises. While the Building Code of Australia contains specific provisions for access to and around new and existing buildings for people with a disability, the Disability Discrimination Act does not provide any technical details on how to provide that access.

### **Mental Health legislation**

The Mental Health Act states that interference with the rights, privacy, dignity and self-respect of people with mental illness must be kept to the minimum necessary in the circumstances. The Act also establishes the procedures for beginning involuntary treatment, by making involuntary treatment orders and through independent review.

#### **The current legislation in the states and territories is:**

- New South Wales : Mental Health Act 2010
- Victoria: Mental Health Act 1986
- Queensland: Mental Health Act 2000 – subordinate legislation: Mental Health Regulation 2002
- Western Australia : Mental Health Act 1996
- Tasmania: Mental Health Act 1996
- Australian Capital Territory: Mental Health (Treatment and Care) Act 1994
- Northern Territory: Mental Health and Related Services Act 1998

### **Sentencing Act 1991**

Part 5 of the Sentencing Act 1991 enables Victorian courts to make restricted involuntary treatment orders and hospital security orders for persons found guilty of offences who require involuntary treatment and care for mental illness.

### **Medication Legislation and Regulations**

The State and territory Legislation relevant to the aged care sector could include the following areas of Legislation, Regulations and Standards:

**Relevant legislation is:****Drugs, Poisons and Controlled Substances Regulations**

The Drugs, Poisons and Controlled Substances Regulations (1995) apply to the administration of medications in health services. These Acts vary from state to state, so it is vital that community care workers are familiar with the specific requirements of the Act administered in the state in which they are employed, if part of their position description requires that they supervise the taking of medication.

**Therapeutic Goods Act 1989**

The Therapeutic Goods Administration (TGA) is Australia's regulatory agency for medical drugs and devices. The primary objective of the Therapeutic Goods Act is to establish a system of controls relating to the quality, safety, efficacy (how effective therapeutic goods, including medicines, are) and timely availability of therapeutic goods used in Australia or exported from Australia. Some provisions such as the scheduling of substances and the safe storage of therapeutic goods are covered by the relevant state or territory legislation.

**NSW legislation**

- Therapeutic Goods and Poisons Act (1966)
- Therapeutic Goods and Poisons Regulation (2002)

**South Australia**

In South Australia, there is an emphasis on and commitment to 'credentialing' of unregulated staff. This occurs when there is need for delegation of a clinical task by a recognised health professional to a care worker. This process is underpinned by the use of competency-based training, clinical health assessments and clearly documented care management plans, as well as a genuine commitment to ongoing evaluation. The Disability Services Office in South Australia is currently developing standards for this credentialing process and all service providers in receipt of Government funding that wish to undertake this process will have to adhere to these requirements.

**Tasmanian legislation**

- Poisons Act 1971
- Poisons Regulation 2002

**Northern Territory legislation**

- Poisons and dangerous Drugs Act 2003 (currently under review)
- Poisons and dangerous Drugs Regulations 2005

**Australian Capital Territory legislation**

- Poisons and Drugs Act 1978
- Poisons and Drugs Regulations 1993
- Privacy Act 1989
- Health Records (Privacy and Access) Act 1997.

## **Freedom of Information Act 1982 (Commonwealth. No. 3, 1982)**

An Act to give to members of the public rights of access to official documents of the Government of the Commonwealth and of its agencies.

## **Equal Opportunity**

Equal Opportunity legislation dictates regulations regarding equal treatment of staff and users of the service without discrimination on the grounds of race, sex, ethnic origin, pregnancy, marital status, age or religion. There are specific provisions that forbid sexual harassment. Harassment may not always be physical. Your organisation will have policies that reflect the requirements of the Act. Equal Employment Officers are trained to ensure that there is no discrimination or harassment in the workplace and that people who want to make a complaint are informed of the procedures to do so. Make yourself familiar with Equal Opportunity procedures that apply in your workplace and who the EEO contact person is.

## **Crimes Act 1900 (NSW)**

There is an obligation for people who have information about serious criminal offences to notify the police. A serious criminal offence is an offence that attracts a penalty of five years imprisonment or more. Health workers should be aware that this covers offences such as drug trafficking, serious assaults, sexual assaults, murder and manslaughter. It does not include minor possession offences or any offences under public health legislation.

NSW legislation is available at: <http://www.legislation.nsw.gov.au/>

## **Crimes Act 1958 (Vic)**

Most crimes in Victorian jurisdiction are codified in the Crimes Act 1958 (Vic.). There are also a number of common law provisions for criminal conduct within Victoria.

### **Criminal offences in Victoria are divided into three categories:**

1. Indictable offences
2. Indictable offences triable summarily; and
3. Summary offences.

Any offence that was known to the *common law* or expressed by *statute* to be a felony is now referred to as an *indictable offence*. A further category is *serious indictable offences*, which are indictable offences punishable on first conviction with imprisonment for life or for a term of five years or more (s 325(6) *Crimes Act 1958* (Vic) (“Crimes Act (Vic)”). Whether an offence is classified as indictable or summary determines in which court, in what manner, and after what pre-trial procedures, the offence will be tried. Where an offence is described as a *summary offence*, or if the Act does not say what type of offence it is, then it is to be prosecuted before a Magistrates’ Court as a summary offence (s 52 *Interpretation of Legislation Act 1984* (Vic)).

## **Criminal Procedure Act 2009 (Vic)**

The *Criminal Procedure Act 2009* (Vic) (“CP Act”) commenced on 1 January 2010. The CP Act locates in the one Act the criminal procedures that apply in the Magistrates’, County and Supreme Courts of Victoria. The Judicial College of Victoria (JCV) has prepared the *Victorian Criminal Proceedings Manual*, which explains in detail the law of criminal procedure as it applies to criminal proceedings under the CP Act. This is available on the JCV website at [www.judicialcollege.vic.edu.au](http://www.judicialcollege.vic.edu.au).

## **Racial Discrimination Act 1975 (Commonwealth. No 52, 1975)**

An Act relating to the elimination of racial and other discrimination.

## **Sex Discrimination Act 1984 (Commonwealth. No. 4, 1984)**

An Act relating to discrimination on the ground of sex, marital status, pregnancy, potential pregnancy or family responsibilities or involving sexual harassment

## **Human Rights and Equal Opportunity Commission Act 1996 (Commonwealth. No. 126, 1986)**

Allows The Human Rights and Equal Opportunity Commission HREOC to investigate complaints under acts such as the Disability Discrimination Act 1992, Sex Discrimination Act 1992, and the Racial Discrimination Act 1975, as well as dealing with infringements of human rights. It states that people have a right to respect and dignity, assistance to become as self-reliant as possible, education, training and work, family and social life and protection from discrimination. [www.hreoc.gov.au/about](http://www.hreoc.gov.au/about) the commission .

## **Freedom of Information Act 1982**

The Freedom of Information Act 1982 creates a general right of access to information in documentary form in the possession of Ministers and agencies limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by agencies.

## **Guardianship and Administration Act 1986**

The Guardianship and Administration Act 1986 establishes a legislative regime to enable persons with a disability to have a guardian or administrator appointed when they need a guardian or administrator. The Guardianship and Administration Act also governs the performance of medical and dental treatments, special procedures and medical research procedures on people aged 18 years or older who have a disability (intellectual impairment, mental disorder, brain injury, physical disability or dementia), where that person is incapable of deciding whether to consent to the procedure.

## **Health Records Act 2001**

The Health Records Act 2001 creates a scheme to regulate the collection and handling of health information in Victoria. The Health Records Act does not override other legislative regimes for confidentiality (such as section 120A of the Mental Health Act) or access to information (such as freedom of information), but rather complements and supplements those regimes. The Health Services Commissioner administers the Health Records Act.

## **Aged Care Act (1997)**

**Based on this Commonwealth Act the industry develops standards and guidelines:**

- Standards and Guidelines for Residential Aged Care Services
- Home and Community Care National Service Standards
- Aged Care Accreditation Standards
- Disability Service Standards.



## **Western Australian Legislation**

### **Criminal Code Act 1913 (WA)**

The present law that governs criminal offences in Western Australia is the Criminal Code Act Compilation Act 1913 which is known as the Criminal Code. The criminal law is predominantly based in statutory law which is the Griffith Code (enacted for Queensland in 1899) and was later enacted in Western Australia in 1902.

The Criminal Code Act 1913 which is the criminal law of Western Australia was enacted in 1913 after amendments were made to the original code. Prior to the enactment of the Code, criminal law in Western Australia is based on common law. Despite codification of the criminal law in Western Australia, the common law has remained an important source of law therein. And all offences are contained in legislation. The most serious offences are contained in the Code, and there are other offences established by other legislations such as Road Traffic Act 1974 (WA) and Misuse of Drugs Act 1981 (WA).

### **Equal Opportunity Act 1984 (WA)**

The Equal Opportunity Act 1984 (WA) is a Western Australian law which makes it unlawful to discriminate against a person in certain areas of public life, including employment. This law is regulated by the Equal Opportunity Commission.

### **Working with Children (Criminal Record Checking) Act 2004**

The *Working with Children (Criminal Record Checking) Act 2004* was passed by State Parliament on 26 November 2004, and was proclaimed on 1 January 2006. Since proclamation a number of amendments have been made to the Act and Regulations. These changes improve the effective administration of the legislation and also improve the protection of children in Western Australia. Legislation can be accessed from the website of the State Law Publisher of Western Australia, which is the official publisher of all Western Australian legislation.

### **Child Protection State Legislation & Reporting - WA**

#### **Local Legislation**

The Department for Child Protection is responsible for overseeing and upholding child protection in Western Australia. Numerous Acts (laws) help to govern and guide the process of child protection.

**These acts include:**

#### **Principal Acts:**

- Children and Community Services Act 2004 (as amended in 2011)
- Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008 (from 1 January 2009, these mandatory reporting provisions will become a part of the Children and Community Services Act 2004)

#### **Other relevant Acts:**

- Working with Children (Criminal Record Checking) Act 2004
- Family Court Act 1997
- Adoption Act 1994
- Family Law Act 1975 (Cth)

## **Carers Recognition Act 2004 Western Australia**

The Carers Recognition Act 2004 formally recognises carers as partners in the provision of care for people who are frail, chronically ill or have a disability. The stated aim of the WA legislation is to improve the culture of service providers by involving and partnering with carers in the delivery of care.

### **Other relevant WA legislation**

- Equal Opportunity Act 1984 (WA) (as amended)
- Public Sector Management Act (1994) (WA) (as amended)
- Disability Discrimination Act (1992) (Commonwealth) (as amended)
- Disability Services Act (1993) (WA) (as amended)
- Racial Discrimination Act (1975) (Commonwealth) (as amended)
- Racial Hatred Act (1995) (Commonwealth) (as amended)
- Sex Discrimination Act (1984) (Commonwealth) (as amended)
- Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth)
- Criminal Code (WA)
- State Records Act 2000 (WA) (as amended)
- Nurses Act 1992
- Nurses Amendment Act 2003
- Poisons Act 1964
- Nurses Board of Western Australia – medication recommendations

## **Regulations and Standards**

Standards are guidelines developed to ensure consistency of practice in human/community service organisations. They may be related to legislation. For example, all states in Australia have developed standards that services receiving government funding must adhere to. These are guidelines or principles for how the service should operate under the legislation.

Standards can be developed without legislation. For example, the NSW Department of Community Services has standards for the Supported Accommodation Assistance programme (non government services working with homeless people) but no legislation. These standards focus on guidelines about allowing clients the right to complain and be treated with respect, etc.

### **The Australian Council on Healthcare Standards (ACHS)**

The ACHS is an independent, not-for-profit organisation, dedicated to improving the quality of health care in Australia through continual review of performance, assessment and accreditation. Established in 1974, the ACHS has maintained its position as the leading independent authority on the measurement and implementation of quality improvement systems for Australian health care organisations. It is recognised internationally and was the third health care accreditation agency to be established worldwide after the Joint Commission on Accreditation for Healthcare Organizations, USA and the Canadian Council on Health Services Accreditation.

## **Service Rights and Responsibilities**

### **HACC Program Statement of Rights and Responsibilities**

The HACC Program Statement of Rights and Responsibilities aims to ensure that consumers and agencies are aware of their rights and responsibilities and can be confident in exercising them. The need to promote respect for the rights of clients of HACC services in this way arises from the nature of their relationship with providers.

#### **The HACC Program Statement of Rights and Responsibilities recognises that:**

- The program assists people who are at risk of premature or inappropriate long-term residential care and their carers
- The program aims to enhance the quality of life and independence of those at risk people and their carers
- The program is administered within available resources and in accordance with the principles and goals set out in the HACC agreements.

Consumers of HACC funded services retain their status as members of Australian society and enjoy the rights and responsibilities consistent with this status. Providers of HACC services operate under the constraints of relevant law.

## **Consumer Rights**

### **HACC consumers' key rights within the HACC Program are:**

- The right to respect for their individual human worth and dignity
- The right to be treated with courtesy
- The right to be assessed for access to services without discrimination
- The right to be informed and consulted about available services and other relevant matters
- The right to be part of decisions made about their care
- The right to choose from available alternatives
- The right to pursue any complaint about service provision without retribution
- The right to involve an advocate of their choice
- The right to receive good quality services
- The right to privacy and confidentiality, and access to all personal information kept about the consumer.

### **Clients/consumer responsibilities**

Consistent with their status as members of Australian society, consumers of HACC services have a responsibility:

- To respect the human worth and dignity of the service provider staff and other consumers
- To treat service provider staff and other consumers with courtesy
- For the results of any decisions they make
- To play their part in helping the service provider to provide them with services
- To provide a safe work environment for staff and help them to provide consumers with services safely.

## **HACC Service provider's responsibilities**

### **In providing services, service providers have a responsibility:**

- To enhance and respect the independence and dignity of the consumer
- To ensure that the consumer's access to a service is decided only on the basis of need and the capacity of the service to meet that need
- To inform consumers about options for HACC Program support
- To inform consumers of their rights and responsibilities in relation to HACC services
- To involve the consumer and carer in decisions on the assessment and service delivery plan
- To negotiate with the consumer before a change is made to the service being provided
- To be responsive to the diverse social, cultural and physical experiences and needs of consumers
- To recognise the role of carers and be responsive to their need for support
- To inform the consumer about the service to be delivered and any fees charged
- To inform the consumer of the standards to expect in relation to services they may receive
- To ensure that the consumer continues to receive services agreed with the provider, taking the consumer's changing needs into account
- To respect the privacy and confidentiality of the consumer
- To allow the consumer access to information held by the service provider
- To allow the carer access to information held by the provider about the consumer where the carer is the legal guardian or has been so authorised by the consumer
- To deliver services to the consumer in a safe manner
- To respect a consumer's refusal of a service and to ensure any future attempt by the consumer to access a HACC service is not prejudiced because of that refusal
- To deal with consumer's complaints fairly and promptly and without retribution
- To mediate and attempt to negotiate a solution if conflict arises between the carer and the elderly person or younger person with a disability
- To accept the consumer's choice and involvement of an advocate to represent his or her interests
- To take into account the consumer's views when planning, managing and evaluating service provision.

## **The Charter of Residents' Rights and Responsibilities**

**A resident of an Australian Government subsidised aged care facility has the following rights:**

[Note: the term 'residential care service' means the same as 'aged care home']

### **A. Each resident of a residential care service has the right:**

- To full and effective use of his or her personal, civil, legal and consumer rights
- To quality care which is appropriate to his or her needs
- To full information about his or her own state of health and about available treatments
- To be treated with dignity and respect, and to live without exploitation, abuse or neglect
- To live without discrimination or victimisation, and without being obliged to feel grateful to those providing his or her care and accommodation
- To personal privacy
- To live in a safe, secure and homelike environment, and to move freely both within and outside the residential care service without undue restriction
- To be treated and accepted as an individual, and to have his or her individual preferences taken into account and treated with respect
- To continue his or her cultural and religious practices and to retain the language of his or her choice, without discrimination
- To select and maintain social and personal relationships with any other person without fear, criticism or restriction
- To freedom of speech
- To maintain his or her personal independence, which includes a recognition of personal responsibility for his or her own actions and choices, even though some actions may involve an element of risk which the resident has the right to accept, and that should then not be used to prevent or restrict those actions
- To maintain control over, and to continue making decisions about, the personal aspects of his or her daily life, financial affairs and possessions
- To be involved in the activities, associations and friendships of his or her choice, both within and outside the residential care service
- To have access to services and activities which are available generally in the community
- To be consulted on, and to choose to have input into, decisions about the living arrangements of the residential care service
- To have access to information about his or her rights, care, accommodation, and any other information which relates to him or her personally
- To complain and to take action to resolve disputes
- To have access to advocates and other avenues of redress
- To be free from reprisal, or a well-founded fear of reprisal, in any form for taking action to enforce his or her rights.

**Each resident of a residential care service has the responsibility:**

- To respect the rights and needs of other people within the residential care service, and to respect the needs of the residential care service community as a whole
- To respect the rights of staff and the proprietor to work in an environment which is free from harassment
- To care for his or her own health and well-being, as far as he or she is capable
- To inform his or her medical practitioner, as far as he or she is able, about his or her relevant medical history and his or her current state of health.

**Rights of people with disabilities**

As well as directly supporting the rights of people with disabilities, the Disability Services Act provided for the establishment of Disability Services Standards for the services funded under the Act. These are readily available in book form, and can assist organisations and individuals in formulating policies and procedures for interaction with their clients with disabilities.

**The Disability Services Standards cover all aspects of access to services for people with disabilities and sets down minimum supporting standards for organisations:**

Standard 1 – Service access.

Standard 2 – Individual needs.

Standard 3 – Decision-making and choice.

Standard 4 – Privacy, dignity and confidentiality.

Standard 5 – Participation and integration.

Standard 6 – Valued status.

Standard 7 – Complaints and disputes.

Standard 8 – Service management.

Standard 9 – Employment conditions.

Standard 10 – Employment support.

Standard 11 – Employment skills development.

Standard 12 – Protection of human rights and freedom from abuse

It is important that you understand that every individual has the right to freedom and respect. They have the right to be treated fairly by others and these rights are not reduced in any way. A client's rights remain the same, regardless of his or her physical or mental frailty, or ability to appreciate his or her rights. A positive, supportive and caring attitude from family, friends, and staff, carers and the community will help people who live in care facilities, or with care assistance, to continue as respected and valued members of society.

## **Recognising potential or actual breaches and report according to organisation procedures**

Although there are expectations for community service workers to maintain certain standards, there may also be occasions of non-adherence to standards.

### **Breaches in procedure**

A breach in procedures is any action or non-action that does not adhere to standard policies or procedures within a specific organisation, or that violates broader established principles of community work. A breach may be accidental or deliberate, and injury or harm does not have to result for a breach to have occurred. An adverse event may be caused by a breach in procedure, and is an unintended consequence caused by medical intervention or health care management such as medication that causes injury, illness, disability or death. An adverse event is distinguished by the fact that the intervention has caused the resulting injury not the condition or disability that the individual was receiving treatment for.

### **The impact of breaches**

Most people accessing the community sector are vulnerable in some way. Duty of care, confidentiality, ethics and organisational procedures seek to protect and empower these people. As noted earlier, organisations, community workers and supervisors all have a legal and ethical obligation to promote and uphold the rights and interests of the clients with whom they work.

### **Breaches of duty of care, confidentiality, ethics and organisational procedures may:**

- Put a client at risk
- Interfere with or compromise a person's rights
- Undermine a client's dignity
- Disempower a person from making choices
- Discredit the organisation
- Contravene funding agreements and jeopardise the organisation.

### **Recognising and responding to a breach**

There are a number of ways a community worker or supervisor can identify a breach of duty of care, confidentiality, ethics or procedures.

### **A worker can use the following questions to determine whether a breach has occurred:**

- Would a reasonable person (with the same level of knowledge and training) behave in this way?
- Is this action aligned with the organisation's code of conduct or the professions code of ethics?
- Is there legislation that governs the specific situation?
- Is the behaviour consistent with organisational policy and procedure?
- Is my behaviour (or the behaviour of another person) in keeping with the job description and boundaries of the role?

If a worker is ever unsure of whether a breach has occurred, they must seek the support and advice of their supervisor. If a worker is concerned that a supervisor is contributing to a breach they must follow the guidelines of their organisation and seek support and advice from management as directed by policy. When a community worker or supervisor observes or becomes aware of a breach, there is an obligation to respond.





### Three

#### **Recognising potential or actual breaches and report according to organisation procedures**

How do you refer breaches, or non adherence to standard procedures, or adverse events, to your supervisors?

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## Element 2: Identify and meet ethical responsibilities



### Identifying, accessing and interpret sources of information about the ethical responsibilities that apply to the work role

#### Information

Employees must be provided, by the management of the work organisation, with information about their legal and statutory responsibilities and obligations. They must remain up-to-date with legislation and with any organisational changes that affect the parameters within which they will work.

Information might be delivered to employees via in-house training, at staff meetings, via intranet, web pages, and using memos and emails as communication tools. Files containing the information that employees will need, can be held in electronic or hard copy. Documented information relating to legislation, regulations and statutory requirements should be available from the Human Resource (HR) department in the organisation, from the internet or government printers. This information must be current, relevant and reliable.

By ensuring that employees understand the legal responsibilities and obligations applicable to the workplace it becomes possible to set standards to which employees must adhere. KPIs (Key Performance Indicators) should be set and agreed upon with employees, so that all workers are aware of the standards to which they are expected to perform. In their work performance and in their interactions with clients, management, workmates and other stakeholders, employees must demonstrate understanding of and compliance with their legal responsibilities and with the key statutory and regulatory requirements relevant to their role and to the service sector in which they work.

#### Legislation

The legislation and regulations that relate to community service providers—regardless of community service sector—are intended to ensure at the least, minimum standards of client care—and to support quality care.

**Relevant regulations and legislative requirements might also, therefore, apply to:**

- Staff qualifications
- Staff/ client ratios
- Staff training
- Volunteer recruitment processes
- Training of volunteers
- Health and safety
- Food hygiene
- General hygiene
- Environmental interaction
- Facilities and equipment
- Resources
  - Infection control
  - Notifiable diseases
  - Management and storage of records (financial! Taxation, personal, ohs records and health records)

## Identifying the scope and nature of own ethical responsibilities



### Scope of your role

Community workers and coordinators usually work as part of a team within an organisation. Every community worker and coordinator is responsible for understanding the requirements and scope of their own work and to clarify any uncertainties with appropriate management staff when required. A community worker has a number of resources available that provide information about the expectations, obligations, scope, limitations and boundaries of their work role. If you are unsure of any aspect of your work role, you must always seek advice from your team leader or manager.

**Information about scope of practice and work role requirements can be gathered from:**

- Position descriptions
- Workplace policies and procedures
- Service standards (if relevant to particular field)
- Legislation
- Codes of ethics
- Salary awards.

### Job descriptions

As you would be aware by now, the kinds of jobs in the CSI are really varied. You can gain more specific information about what is required of you in your particular position by looking at your job description (or position specification as it is sometimes known). Throughout your studies in this topic, try and obtain copies of job descriptions in the CSI that you are interested in so that you can compare and have a clearer idea of the diversity of requirements. You will find that they include roles and responsibilities, some practical requirements such as working hours, and also provide some idea about the line of management (i.e. to whom each worker is responsible).

**A description of your position may include some of the following:**

- Job title
- Aims and expected outcomes of the job
- Required or preferred skills
- Period covered by the position as well as hours and days involved
- Training and supervision provided by the organisation
- Responsible person within the organisation as a point of contact
- Location of the work
- Special requirements, such as driver's license or police/good character check.

## **Duties**

**Your job description will list the duties which must be completed as part of your job. For instance, the duties could be:**

- Facilitating clients' involvement in community activities
- Transporting clients to appointments
- Maintaining a safe environment for clients
- Facilitating groups of clients
- Observing and reporting for clients' plans
- Participating in the development of clients' plans.

## **Selection Criteria**

The selection criteria for a job define the essential skills, knowledge, experience and qualifications that an applicant for the role must have. By default you should possess these in order to be working within your current role.

**For the duties listed above the selection criteria could be:**

- Demonstrated interest in caring for... (for example, young people or children or people with mental illness)
- Sound interpersonal and communication skills
- Current drivers licence.

## Accepting responsibility for your own actions



The community services industry can be a very stressful area in which to work. We are often working with a high volume of clients with complex issues and within a context of inadequate resources and support. Given this, it is important to be clear and stick within the limits of your roles and responsibilities. This means not working many unpaid hours and taking on tasks which are outside your area of responsibility. In the long run, it is far more effective to advocate for adequate resources than run around trying to do everything and burn yourself out in the process!

### Always try to:

- Be mindful of your job description and focus your energy on completing tasks that are clearly defined as your responsibility
- Seek advice/clarification with your supervisor where necessary
- Adopt a team approach to completing complex tasks—two hands are better than one!
- Work within policies and procedures
- Use supervision as an opportunity to formally clarify your responsibilities and identify your training and support needs.

When seeking work in the industry, it is very important that you read the job description thoroughly before accepting a position and that, once you do accept a position, you follow that description.

### There are several reasons for this:

- **You are accountable to the people who use your organisation:** Service users in the community services industry are often in very vulnerable circumstances. A job description is a way of trying to ensure they receive a professional standard of service. This, in turn, tries to ensure they will not be taken advantage of and is therefore a way of protecting their quality of life and empowering them.
- **You are accountable to your employer:** A job description lets you know what is expected of you by your employer (your role and responsibilities) and provides a guideline which clarifies those expectations. Your employer may use this to monitor your work practices. They may also use it as a basis for negotiating changes to your role and planning for other positions. Job descriptions have usually been carefully planned to ensure professional service provision. Each position has different requirements. Unless employees adhere to those requirements, the service cannot be sure it is achieving its goals and/or adhering to its liabilities.
- **You are accountable to yourself:** There is a high incidence of work-related stress in this industry. Workers need to find ways of looking after themselves. A job description is a reminder to you of your limits and provides a way of protecting yourself from exceeding those limits. A job description can also be a means of protecting you and preventing employers from exploiting you as a worker. It is also a way of checking that you are in fact fulfilling your responsibilities.
- **You are accountable to your colleagues and your profession:** By accepting your job description and working according to it, you are agreeing that it is a reasonable set of expectations for all workers in that position. Therefore, if you accept an unreasonable description or if you do not comply with a reasonable description, you are letting down your fellow workers.



## Four

### Identifying the scope and nature of own ethical responsibilities

#### Accepting responsibility for your own actions

- I. Describe how you take responsibility for your actions. Give examples from your workplace, experience or ask an experienced coordinator.

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## Meeting ethical responsibilities according to workplace policies and protocols, and scope of role



Workers in the CSI are often faced with situations that require and ability to make good ethical decisions. Management has a responsibility to develop policies and procedures within their organisation and ensure practice that reflects the values, mission and purpose of the organisation.

An ethical organisation has a clear set of values and principles that direct that everyone undertakes their role. That is why it is so important to have ethical standards, so that we are operating by a professional set of guidelines, not what we personally think is right or wrong.

Each professional discipline or its professional association, e.g. social work, psychology, nursing, welfare work, etc., has its own particular code of ethics and/or code of conduct. All members are required to abide by their own professional code of ethics and sanctions may be applied by the professional body for breaches of these codes. Ethical codes are usually broad and encompass key areas of concern for the particular type of work being performed. By clarifying what ethical conduct is supposed to be, professions show commitment to a moral standard of behaviour.

As well as professional codes of ethical behaviour, some services also require their workers to comply with additional and more specific guidelines in keeping with the needs of that particular community and/or agency. For example, child care services and services for people with disabilities have particular requirements or standards, as does the aged care industry. All ethical code requirements are based on respect for the client, care and protection for the client where required, and appropriate behaviour towards the client at all times.

### Code of ethics

Each professional discipline or its professional association, eg. social work, psychology, nursing, welfare work, etc. has its own particular code of ethics and/or code of conduct. All members are required to abide by their own professional code of ethics and sanctions may be applied by the professional body for breaches of these codes. ethical codes are usually broad and encompass key areas of concern for the particular type of work being performed. Professions show commitment to a moral standard of behaviour by clarifying what ethical conduct is supposed to be. They are guidelines rather than rules.

A professional code of ethics is a set of guidelines that outlines the expected behaviour of workers. It exists to ensure that clients' rights are protected and to ensure that there is consistency and credibility in professional practice. Ethical guidelines allow us as workers to operate by a professional set of guidelines rather than what we personally think is right or wrong.

An acceptance of the code of ethics by workers ensures that the safety, wellbeing and rights of clients are being actively considered in the workplace at all times. The code of ethics relevant to your client service or profession provides specific guidelines for individual staff behaviour in the service. Workers are in a relationship of trust with their clients and often also with the families of clients. This important relationship can be easily damaged. Workers often face situations that involve a conflict between the needs or behaviours of others and their professional and personal values, called 'ethical dilemmas'.

## **Why work within the code?**

An acceptance of the code of ethics by workers ensures that the safety, well-being and rights of clients are being actively and continually considered within the workplace. A code of ethics is only useful if it is part of everyday work practice. The code is voluntary, but most services require workers to adhere to a professional code or the code of the service, for the benefit of both the client and the service.

## **Where do ethical standards come from?**

### **Community attitudes**

Ethical standards are based on the underlying values held by the industry itself. These values about how we care for people and the services we provide are tied to social attitudes of the time. For example, until the mid-1980s in Australia it was acceptable to 'lock away' in an institution a person who had a disability. These actions came from a belief that people with disabilities were sick and not capable of participating and contributing to the community. In the last 20 or so years there have been enormous shifts in community attitudes towards disabilities. It is now no longer acceptable to lock people away – this is a violation of people's rights and their ability to make choices about the type of life they want to lead. The Disability Services Act is the legislation that sets out very clear guidelines on how services now need to provide care that upholds these new community attitudes.

### **Human rights**

As members of the Australian community we all have rights and corresponding responsibilities. Rights are our basic entitlements as members of a community and are linked to the concepts of social justice and empowerment (ensuring that everyone has the knowledge, skills and confidence to take control of their lives and be treated equally in society).

The concept of human rights is a value which has influenced codes of ethics in the CSI. The concepts of freedom, choice, privacy, dignity, social justice, participation and non-discrimination are all reflected in the ethical standards. The United Nations' Universal Declaration of Human Rights is probably the most well-known statement on the rights of individuals. This is an example of an International Charter that the Australian Government has agreed to uphold.

### **The rights of the child**

In 1989 the International Convention for the Rights of the Child was adopted by the General Assembly of the United Nations. The Convention was developed by countries represented at the UN and was agreed to by the Australian Government in December 1990. When a country agrees to a UN Convention, it agrees to take on the responsibilities of meeting the standards set down in that Convention. The Convention makes a commitment to the protection of children by outlining the rights of children and the responsibilities that governments and parents have to provide for these rights.

### **Why do we need the Convention?**

Many people in prosperous parts of the world find it hard to realise that millions of children in the world live in poverty. Children, because of their physical and intellectual immaturity, are vulnerable to exploitation and need special safeguards and care and the Convention aims to do this. Even here in Australia, many children experience abuse in all its forms – unfair work requirements, life on the streets and exploitation and discrimination.

### **What is the UN Convention on the Rights of the Child?**

The UN Convention on the Rights of the Child is made up of 54 articles. The Convention outlines the minimum standards governments must attempt to meet in providing adequate services and support for children and their families in the areas of health, welfare and education. It signifies the international community's recognition that children, as human beings, are entitled to the full enjoyment of human dignity.



**Duty of care**

The concept of duty of care is also tied in with ethical standards and reflects a community attitude that people have a right to be cared for in environments that are safe and free from abuse and neglect. Duty of care refers to your legal responsibility to provide a proper standard of care to all clients. It is an obligation of all workers to perform their duties with care, attention and caution. This includes your duty to protect confidential information.

**Self- determination**

This refers to clients being able to make their own decisions and choices about their own lives (as long as other people are not harmed by those choices).

**Acceptance**

Acceptance involves recognising the importance and the value of each individual person. It does not mean always agreeing with their behaviour but rather acknowledging their right to exist, be understood and valued. It relates to the respect and dignity which everyone is entitled to.

**Confidentiality**

Confidentiality is the protection of personal information. Confidentiality applies to all information that a client or other care worker tells you verbally or gives you in writing. It also applies to things that you learn through observation. All information in a person's health care record or file is confidential and may not be disclosed without permission from the client or their guardian. Information may be shared with other team members but only when they need the information in order to provide proper care. Only the client has the right to decide who to share their personal information with.

## Workplace policies and protocols



Community services organisations create policies, protocols and procedures to comply with regulatory requirements and ensure workers have clear guidelines to follow in carrying out their duties. These guidelines reflect the legal and ethical obligations of community services work and provide a framework for a consistent standard of practice. The responsibility for monitoring how policies and procedures are put into practice usually rests with staff working in supervisory or team leader roles. It is important to ensure workers understand their obligations and help clarify any unclear guidelines or concerns about their responsibilities and the scope of their work.

Legal requirements and obligations should be included in service policies, protocols and procedures. Written policies are able to provide clear expectations, consistency and support for workers working as support workers as they provide general protocols and procedures to be followed in the daily operation of the service. Written policies document how the service operates. The way in which policies are written provide the standard for them to be performed (protocol) and the implementation of the policy is the way it is done (procedure). Policy will also reflect current best practice and research within the profession.

As a support worker you are required to understand and meet the policies, protocols and procedures of this service. You will be provided with policies that will enable you to operate effectively within the service, meeting both your legal responsibilities and obligations. As an employee, you can then have clear expectations regarding your role and responsibilities as a member of that service.

### Examples of policy documents could include:

- Brokerage (specific to the organisation)
- Case management
- Client selection
- Client confidentiality
- Contact with the media
- Equal opportunity
- Workplace health and safety.

## **Procedures**

Procedures are more detailed instructions about how policies should be carried out by employees. They provide a link between the organisation's plans and strategies and day-to-day operations. Protocols are similar to procedures but deal specifically with the agreed ways in which organisations interact on a specific matter.

### **Procedures may be:**

- Mandatory (i.e. must always be followed) or,
- Discretionary (i.e. to be followed if required).

### **What policy and procedures cover**

#### **Among many other things, policies and procedures address:**

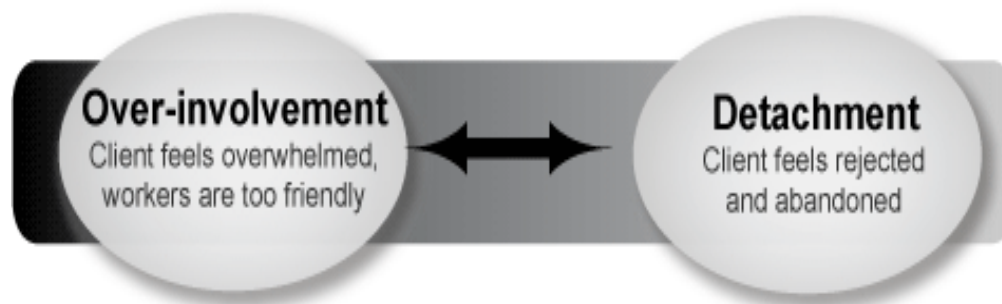
- Standards of workplace behaviour
- Code of conduct
- Workplace health and safety
- Workplace harassment
- Equal employment opportunity
- First aid
- Infection control
- Grievance procedure
- Emergency procedures
- Client service delivery
- Eligibility criteria
- Privacy and confidentiality.

## Professional boundaries

One of the more difficult ethical dilemmas with which you may be confronted relates to boundary violations in working relationships. This occurs when a professional worker or employee forgets that they are in a professional relationship and not a friendship. Once this professional relationship has been lost, there is then potential for the worker to become over-involved with the client and potentially violate the client's rights.

Professional boundaries need to be observed to ensure that professional standards are maintained. Professional boundaries do not mean the avoidance of another person and their problems. Acting professionally assists you to deliver care to someone whom you may not like personally.

**The professional relationship sits on a continuum between over-involvement and detachment, as shown below.**



What are some of the behaviours or warning signs that might indicate a community services worker is overstepping the professional boundary?

### Signs of boundary violations

Whilst in isolation none of these behaviours may indicate a potential boundary violation is happening, they could be indicators of a potential problem.

**Indicators may include the community and community services worker:**

- Developing strong feelings for the client
- Spending more time with this client than others
- Having very personal conversations with the client
- Receiving calls at home from the client
- Receiving gifts
- Doing things for a client rather than enabling the client to do it for themselves
- Believing only they can offer the right services to the client
- Physically touching the client.



## Five

### Meeting ethical responsibilities according to workplace policies and protocols, and scope of role

I. Find a definition for the following:

Policy: \_\_\_\_\_

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Protocols: \_\_\_\_\_

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Procedure: \_\_\_\_\_

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2. Explain a work-type situation where you need to be guided by a policy:

a. Identify the policy.

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b. Provide an overview of the policy.

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c. What documentation is required if the document needs to be changed?

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d. What is your role in this process?

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## Recognising potential ethical issues and dilemmas, and discuss with an appropriate person



### Ethical dilemmas

There are times when you will find yourself trying to balance the needs of different people involved in a decision, such as the client, a family member, other clients, the service and yourself. Along with having a code of ethics of your profession, having a systematic way of examining a difficult ethical dilemma increases your chances of making sound ethical decisions.

Ethical dilemmas are recognisable by the fact that there are at least two sets of values involved, and you are being asked to decide which is most important. Being faced with conflicting values usually gives us a sense of confusion and makes us feel unsure. You need to ask yourself: what is the most important point (i.e. obligation, value, need, issue, etc.) here? As a worker your primary responsibility is to safeguard the client's rights, but sometimes the best way to do this is not always clear. Other workers, carers or family members may see the situation differently. The situation may not be clear-cut.

#### Ethical dilemmas can be roughly categorised in the following ways:

**Competing values :** for example, you may be working with a young person who is abusing drugs. You have to acknowledge your client's right to self-determination (which would be the case for not intervening) versus the value of protecting human life (the case for intervening).

**Multiple client system:** Your client may have certain priorities and concerns, but there may be parents/carers in the client's life who view the situation differently and have conflicting concerns. To whom does the worker owe the primary obligation? The answer should of course always be the client, but this is not always straightforward especially when the client may be reliant on others to care for them. An example is an ageing person wanting to stay in their own home while family members want them to move to an aged care facility.

**Value dilemma:** This is where your own personal values may conflict with the action you need to take. For example you have been working with a client for a number of months. At times the client can be difficult. Her family appear very supportive of her, are friendly and seem to do a lot for her often in very difficult situations.

Recently however your client has been telling you that her mother has been taking money from her and hit her on one occasion. You know that this situation should be reported but on the other hand you really like your client's mother and are also aware that the family are operating under stress. You have the dilemma of wanting to cause the least harm to the family, but have the legal responsibility to act appropriately. Ethical dilemmas are recognisable by needing to ask the 'But, what if ...?' question and the feeling of confusion or tension around how to respond.

## **Restraint and restrictive practices**

Restraining or isolating an adult for reasons other than medical necessity or to prevent self-harm is considered abusive. This may include the use of chemical (e.g. medication) or physical means or the denial of basic human rights or choices such as religious freedom, freedom of association, access to property or resources or freedom of movement. These practices are not considered to be abuse if they are applied under a restricted practice authorisation.

### **Examples of restraint and restrictive practices**

- The use of social isolation (ignoring a person) when it is not a designated behaviour management strategy
- Putting a client into a room with the door locked
- Locking a client in a room all night
- Using other clients to provide physical control over a client
- Expulsion for masturbating
- Excessive chemical restraint – use of medication without proper authorisation or consent
- Forcing clients to eat food they do not want to eat
- Under/over medication
- Denial of basic human rights or choices such as religious freedom, freedom of association
- Tying a person to a chair to prevent movement.





## Six

### **Recognising potential ethical issues and dilemmas, and discuss with an appropriate person**

Read the following scenario and respond to the questions.

#### **Scenario 1:**

Ruth is a woman in her 60's who lives in supported accommodation. Ruth's children are very religious and are members of one of the traditional churches. Ruth has become interested in a religion of which her children don't approve.

She has requested support workers to support her attending one of their meetings this coming weekend which they have agreed to do. Ruth has not told her children what she is doing on the weekend because she knows they will be upset by this. It usually ends up in an argument with Ruth becoming very distressed. On the day of the meeting, Ruth's daughter phones to talk to Ruth. Obviously Ruth cannot come to the phone because she is at the meeting.

1. What are the ethical issues in this scenario?

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2. How should staff respond to Ruth's mother's question about Ruth's whereabouts?

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3. Explain your reasoning as to why you think this would be an appropriate response.

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4. Explain your reasoning as to why you think this would be an appropriate response.

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5. Indicate what other information you would reference when responding to Ruth's mother (e.g. legal age, disability standards). (Maximum 250 words)

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## Recognising own personal values and attitudes and take into account to ensure non-judgemental practice



Working in community service, you will encounter difference every day. Differences include value and belief systems, ethics, and culture. Our values and ethics, and our cultural heritage are difficult to change and will be at times challenged by others and their belief systems. We will be challenged to establish a relationship and hopefully an effective *working* relationship, with clients of different ages, ethnicity, gender, sexual orientation, values and ideologies. The challenge is to work effectively with clients of different gender, ethnicity, culture, socio – economic circumstances, sexual orientation, life circumstances, values and beliefs.

Because we are human we have our own personal standards. This is what we call our personal values - our personal ethics. It is the way we respond and act in situations. Our values have been developed by our experiences. This can include our upbringing, our family situation, our culture and religion and the people who are important to us. Our everyday behaviours are based on our values, our ethics, and our rules.

### Think about how you would feel or respond to the following.

- What would you do if you found ten dollars in the street?
- How would you respond if someone you didn't know shouted harshly at you?
- Your values would influence how you would respond to these situations.

### Definitions

#### Value

A value is defined as that which individuals, groups and communities view as important in life. Values are part of each person's belief system. They develop from rules learnt as we grow up, and become internal messages about how we should behave and what we believe in. We are all influenced in varying degrees by the values of our family, culture, religion, education and social group. We unconsciously absorb values when we are young from the socialisation processes we undergo. During adolescence we consciously explore our values and after self-evaluation and gaining information we start to develop our own values. As people grow older, values will be altered through personal experience. Since each person has a different life experience and family background, their values will also be different.

**Attitude :** An attitude is defined as a belief and describes what we think is the proper way of doing or thinking about something. Attitudes vary in intensity. When we feel strongly about something they are called values. Attitudes that are less important to us are called opinions.

**Stereotype :** A stereotype is a simplified image that develops when you group people together on the basis of a similarity or characteristic. For example an image that comes to mind when you think about 'the elderly', 'politician', 'Aboriginal', 'Muslim', 'teenager', 'single parent', 'drug addict' 'alcoholic' or a 'disabled person' is probably a stereotype. You may only know one or two people from each group and sometimes none at all but to simplify things you assume that most people from that group are the same. This is also called homogenising.

We all bring to our work our own attitudes and values. In the CSI, being an effective worker will sometimes involve the challenge of moving beyond our own values and attitudes and seeing a perspective different from our own. We will be challenged to establish an effective working relationship with clients of different age, ethnicity, gender, sexual orientation and religious affiliation, with different values and beliefs.

**Diverse values :** Views about drug use, culture, sexual preference, politics and gender roles will always be present in one way or another, so we all need to be aware of the impact our values have on processes inside and outside of the workplace. We do not all think about and respond to issues in the same way!

**Values influence the choices you make. As a care worker in the Community services industry you will be constantly faced with choices on a daily basis:**

- Which job should be completed first?
- How should you respond to clients' needs?
- What are your priorities when work and personal life conflict?

Different values can create competing needs for you in the workplace. Your values about older people, people with disabilities, people with alcohol and other drug issues, your caring duties, your honesty, your work ethic, your acceptance of other people's values may all differ from your work colleagues' values. They may also be different to the standards and policies of your organisation.

### **False beliefs**

**Some of these misconceptions of older people and people with disabilities include:**

- Being dependent
- Incapable of contributing to the community
- Unproductive
- Living on the pension
- Being in need of services
- Ending up in nursing homes
- Having poor health
- Being a burden on family
- Being unable to work.

Over time these images develop into false beliefs or myths that come to represent what it's like to be older or to have a disability, living in our society. This not only affects the way people feel about themselves but also impacts on their quality of life. The media play a major part in perpetuating negative images, by portraying older people and people with disabilities as victims, as being lonely, being poor, unhealthy, unfit, depressed and inactive.

These negative images are stereotypes. The reality is that the vast majority of older people and people with disabilities would fit into the opposite category. Unfortunately, those stereotypes are believed to be true by the community at large, including care workers and even older people themselves.

## **Pre-existing beliefs**

As a worker in the CSI, the pre-existing beliefs you may have could be related to stereotypes that have developed for you around issues like sexuality, alcohol and other drugs, ageing and disabilities, independence, health, the rights of people, your idea of health and what it's like to be older and/or disabled. These stereotypes could affect the way you interact and work with clients. This is because you have assumptions about what your clients can and can't do for themselves, the way they should think about issues and what is best for them. If you make assumptions as a worker then you are denying clients their rights, respect and dignity. As a worker this would be regarded as a breach in your duty of care towards clients.

## **Work practice and stereotypes**

It is important that you explore your personal beliefs and become more aware of the way you view older people and people with disabilities. This will assist you in your work to:

- Develop objectivity and avoid stereotyping
- Develop a better understanding of clients as individuals
- Identify individual needs and use a client centred approach
- Encourage clients independence
- Improve communication skills
- Plan and implement services appropriately
- Work professionally and ethically.

Tip: Don't allow stereotypes to cloud your vision!

## **Non judgmental approach**

This is one of the principles of ethical work practice that was articulated by Father Felix Biestek in his book, *The Casework Relationship* (1974). Being non-judgemental means that we do not have the right to judge our clients or communities with which we work. There is an old Indigenous American saying 'Never judge another man until you have walked two moons in his moccasins' and as we cannot walk in another person's shoes, we have no right to judge them.

Often, when we do make judgements about people, it is on the basis of stereotyping and prejudices, and often result in disadvantage and disempowerment. It would be nice to say 'Oh no, I won't do that!' but the reality is, that for whatever reason, there will be times when you will make judgments. It is more effective to develop the self awareness to know what your prejudices are and work out strategies for recognising and dealing with them.

It is important that as community service workers we take these steps. Our clients have often experienced discrimination, harassment and prejudice as a result of factors in their lives, which may include their age, ethnicity, cultural backgrounds, gender, disability or sexual preference, as well as their personal problems. Asking for help, for many, may have been a difficult process and, often, a last resort. We live in a society where there is an expectation that we are able to look after ourselves (with some family assistance). For some, however, this is an unrealistic expectation and for many family help is not available. So having sought help, the last thing a client needs to feel is that they have once again been judged.

Being able to be non judgmental is important and it is a skill that needs to be worked on. It is also something that we need to constantly evaluate throughout our working lives in the community services sector by maintaining our awareness, being honest with ourselves and being prepared to change.

## Principles of social justice

Social justice principles are about making sure that everybody in society has a fair go and receives their share of whatever society has to offer.

### They are concerned with:

- Equal distribution of economic resources
- Equality of civil, legal and industrial rights
- Equality of opportunity for participation and decision making in society
- Fair and equal access to resources such as health, welfare, justice, housing and education.

### The main principles to social justice are:

- Access
- Equity
- Equality
- Participation.

Access and equity are terms frequently used together and therefore are often seen as having the same meaning. They are, however, different concepts.

### Access

Access is primarily concerned with ensuring that no matter what their circumstances, abilities or background, all people are able to find out about and use services in their community. Examples of this are ensuring buildings are wheelchair accessible, that information is available in a variety of languages and support mechanisms in place to ensure access to information.

### Equity

Equity is about providing additional services to ensure that people from disadvantaged groups have equal access to all that the community has to offer. Equity is not the same as equal opportunity (equality) which is about making sure that people are not discriminated against and treated unfairly on the basis of difference. Equal opportunity focuses on everyone having an equal start, whilst equity focuses on participation and achievement to an equal level.

### Equality

Equality is about ensuring access and equity will ensure equality (uniformity of equal terms for all). This means that all people are treated equally, no matter who they are, or what their background is.

### Participation

Participation means that clients are given the opportunity to, and are actively supported in, having a say and being heard in decision making about policies and services that affect them. An example of this would be where a service implements a questionnaire to all clients to provide feedback on the service they are receiving. There are some organisations that are specifically set up to be the voice for the people where their role is to lobby governments to ensure participation and a say in policy development. These organisations are called peak bodies or advocacy services.

## Respecting differences



Current government policy at both state and Federal levels clearly articulates the need for service provision to be focused in a way that recognises that our society is made up of a whole range of groups that have differing needs. If we genuinely want to meet these needs then we have to develop appropriate strategies, and the strategies developed for one group may not meet the needs of another group. The most effective way of doing this is to consult with the various groups and work with them to develop strategies. In both the Victorian Government Plan of Action and the National Drug Strategic Framework a number of groups have been identified as having specific needs.

### **These include:**

- Young people
- Families
- People from culturally diverse backgrounds
- Those with mental health/AOD problems
- Indigenous groups
- Those experiencing chronic pain
- Rural and remote communities
- Offenders/prisoners
- Disadvantaged communities.

Therefore, it is important that as a worker you take into account the needs of these groups, as appropriate to your organisation. This means not only looking at what your service offers, but barriers that may exist in your service that could prevent these groups from accessing your service. Often funding for services will be directly linked to meeting outcomes relating to these groups. Therefore, it is an essential aspect of an organisation's planning, delivery and evaluation processes.

Regardless of who the client or the client group is, regardless of their behaviour and values, the person/group you are working with deserves to be treated with respect and dignity—they too are human beings. If you respect your clients they will, through feeling valued, be given the best conditions to grow and maximise their chances in life.

If you judge your clients, discriminate and try to impose your moral value system onto them, you are more likely to make them feel worthless and disempowered. They are also likely to reject you and the growth and positive regard that you may have shared together. If, however, you are able to accept your clients are worthy of being treated with respect (regardless of their behaviour) then you may well find over time that they are better able to be honest with themselves, challenge what they perceive needs to be changed in themselves and their situation, and grow.

## **Non-discriminatory approaches to work**

### **When dealing with clients you should take the following issues into consideration:**

- Personal prejudice may affect your relationships and disadvantage the individuals concerned
- Resources may not be available for certain groups or may not be appropriate for their needs. For example, very few rehabilitation centres cater for the needs of women with children or for the cultural needs of migrants
- There may be a stronger emphasis on a certain type of approach according to the prevailing prejudice towards a particular group (for example, Aboriginal people are more likely to end up in prison for drunkenness than non-Aboriginal people).

Being disadvantaged within a society is usually coupled with the society's lack of recognition of this disadvantage. Individuals not only suffer disadvantage through lack of access to resources, but they internalise the implicit values held by the power structure: that some people are more valuable to the community than others.

Often disadvantage occurs either as a result of discrimination, or can lead to discrimination. Discrimination may be defined as treating someone unfairly because they belong to a particular group. Two general types of discrimination are direct and indirect discrimination. Direct discrimination is easy to see since it is clearly unfair (eg refusing to employ a person who has children). Indirect discrimination is harder to see. It results from having a rule or situation that is the same for everyone, but this makes it unfair for some groups of people (eg to require everyone doing a certain job to be above a certain height, even though this is not necessary to perform the job role). It is also important to understand that some discrimination, while it is unfair, is reasonable. This may be for reasons of public or personal safety.

### **Developing cultural sensitivity**

There are a number of steps we can take as community services workers in the CSHI to develop cultural sensitivity with clients from CALD backgrounds:

- Identify our attitudes and values before entering the workplace
- Try not to make value judgments about what is right and wrong for other people
- Communicate directly with the client, using an interpreter if needed, and take the time to get to know them
- Encourage the client to communicate in their first language if they feel more comfortable doing so
- Communicate and respond to the client in a professional manner regardless of your opinions about their behaviour and values
- Try to imagine what life is like from the client's perspective
- Keep in mind that the client has the right to respect and dignity; this includes respecting their choices
- Avoid stereotyping and labelling of the client's behaviour
- Record only factual information about the client, not opinions
- Obtain information about clients from as many other sources as possible: read social history, care plan, talk to co-workers, family members etc
- Research the client's culture, lifestyle practices and religion
- Check whether your observations are similar to those of your work colleagues.



## **Providing interpreters where necessary**



### **Effective communication**

Often in the CSHI we work with clients who do not speak the same language as we do. In order to provide a professional, confidential and effective service for everyone it is essential to use trained interpreters to communicate appropriately with people from CALD backgrounds or being different to our own. There are also ways of enhancing our personal communication with clients in order to develop a more professional working relationship.

### **Interpreter**

Interpreters are workers who translate spoken language and convert information from one language into another. In Australia the National Accreditation Authority for Translators and Interpreters (NAATI) is the organisation responsible for training and accrediting interpreters. There are 5 levels of NAATI; in the CSHI it is recommended we use a level 3 interpreter. The agency you work for will have policies for accessing interpreters and may use a particular service. By using professional interpreters you are demonstrating cultural sensitivity towards the client by giving them the opportunity to communicate in their own language.

### **The following are some simple strategies for effective cross-cultural communication:**

- Speak slowly and clearly
- Use short and simple sentences
- Maintain normal volume
- Use different words to express the same idea
- Prioritise and sequence your instructions
- Avoid jargon
- Respond to expressed emotions
- Be aware that residents from some cultural backgrounds may avoid disagreement at the expense of being honest
- Allow time for questions and clarification
- Use communication aids when necessary
- Communication aids and other strategies to assist communication between people who do not speak the same language are invaluable in any setting.

**Use the following strategies to ensure that clients can communicate in their own language as much as possible:**

- Learn a few words in the languages of the clients with whom you are working
- Use communication charts and other aids
- Ask relatives and friends for help when necessary and appropriate
- Use signage.

Other strategies to improve communication may require specific training and authorisation. Your manager (or their delegate) is responsible for co-ordinating communication aids such as:

- Requesting professional interpreters
- Organising bilingual doctors and care staff
- Using telephone interpreter services.

It is important that all staff be aware of the appropriate uses and restrictions regarding communication aid strategies so that the highest standard of care is maintained at all times. Inappropriate use of certain communication aids could cause more harm than good.

### **Communicating with assistance from a bilingual person**

Being bilingual or multi-lingual does not mean that one is able to interpret. Professional interpreting is a specialised skill requiring extensive training. Interpreters are not only highly trained professionals, they also specialise in specific fields, such as law or medicine.

**A professional interpreter must be used in the following ways.**

#### **Medical consultations**

- Treatment needs/options
- Test results
- Care plans

#### **Legal advice / decision-making**

- Financial arrangements
- Power of attorney
- Wills
- Confidential information

To any private/confidential information.

### **Why do we need interpreters?**

There is a legal obligation that interpreters are used in situations relating to medical, legal and confidential matters (as shown above). Professional interpreters can be bound by client confidentiality to protect the client's rights and interests. There can be serious consequences for the client if professional interpreters are not used in these situations.

A bilingual person may not be able to adequately explain the information being presented, or represent/advocate for the client's needs or wishes. If the bilingual person is a relative or friend of the client, then the client's right to privacy and confidentiality regarding sensitive information will not be protected.

This does not mean that bilingual staff should never be used to assist communication. They can be a great resource to your work, but it is vital to remember that bilingual relatives, friends and colleagues should only be asked to assist with communicating simple, practical messages. Bilingual staff can also be a great help with recreational activities such as bilingual bingo. Remember that bilingual staff have their own busy workload and that assisting communication between others is additional work for them.

## **How to communicate effectively with the assistance of a bilingual person or interpreter**

- Make sure the person you ask to help speaks the same language/dialect as the client
- Check that the bilingual person can spare the time to help you or book a professional interpreter
- Explain the questions you wish to ask the client and what assistance you'd like from the interpreter
- Approach the client together
- Always address the client directly
- Let the bilingual person ask the client if they mind the bilingual person helping you to communicate
- Speak to the client—NOT the bilingual person
- Use short, simple sentences
- Speak slightly more slowly than usual
- Use a normal volume
- Pause after each sentence to allow the bilingual person to repeat what you have said
- Allow time for questions and clarification
- Don't use jargon, slang or jokes—they will not translate effectively
- Check regularly to ensure the client understands
- Ask the client if they have any questions for you
- Thank the bilingual person in front of the client
- When you have moved away from the client ask the bilingual person if they would like to debrief or if they have any comments/suggestions. This will allow you to discuss any concerns.

Please note: It is important that the final step ever takes place in front of the client because this will allow the bilingual person to express things they may not wish to say in front of the client. The client will feel excluded and embarrassed if the conversation continues without including them.



## Seven

### **Recognising own personal values and attitudes and take into account to ensure non-judgemental practice**

Think about situations in which you felt challenged by difference, whether it be with regard to sexuality, culture, race, etc. be honest.

1. Provide a brief summary of the situation.

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2. Identify how you were affected, either in a positive or negative way. You may be shocked, outraged, incensed, surprised or excited by events in your day. Be specific. What is the essence of your response? Put it into words.

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3. Detail two strategies you could use to overcome your apprehensions about dealing with this situation?

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4. Look at what is happening in the world at large - via newspaper, radio, television, current affairs, discussion with colleagues/peers/friends, etc.

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5. Make a note of when you are affected, either in a positive or negative way. Again, be specific. What caused the reaction? Why? What is the essence of your response? Put it into words.

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## Using effective problem solving techniques when exposed to competing value systems

Workers are in a relationship of trust with their clients and often also with the families of clients. This important relationship can be easily damaged. Workers often face situations that involve a conflict between the needs or behaviours of others and their own professional and personal values. This is what we call an 'ethical dilemma'.

Ethical dilemmas are often situations where there is a clash of values, and you are required to decide which value is the most important. As workers our own personal values can conflict with the values of our profession and/or the values of our clients. When we are faced with an ethical dilemma we can feel confused and unsure how to respond. As a worker our primary responsibility is to safeguard the rights of our clients, but sometimes the best way to do this is not always clear. Other workers, clients, carers or family members may see the situation differently from us.

### Principles of ethical decision-making

Ethical dilemmas are characterised by the 'what if' question and are often situations where there seems to be no clear solution to the problem. So given the complex nature of ethical dilemmas, how do we resolve them and respond professionally and appropriately with our clients and colleagues? All professional ethical codes and guidelines are based on care and respect for the client at all times.

#### In order to ensure that the decisions you make are ethical you need to:

- Be very clear on the guidelines of your particular profession
- Be familiar with and guided by all relevant legislation
- Be familiar with and guided by all relevant standards which further define how the legislation is applied
- Be aware of your employing agency's code of conduct, which is reflected in their policy and procedures. This may be specifically linked to the client group you are working with
- Demonstrate a commitment to a moral standard of professional behaviour, which you uphold at all times
- Have a system in place which allows you to explore all sides of an ethical dilemma and examine the consequences of any action and/or decisions you may make.

While you explore and examine the ethical dilemma, it is important that you consult with your colleagues, supervisor, director or supervisor. In discussing the dilemma with them you may begin to see the situation more clearly.

**You could also refer to the following model, which can assist you in dealing with ethical dilemmas:**

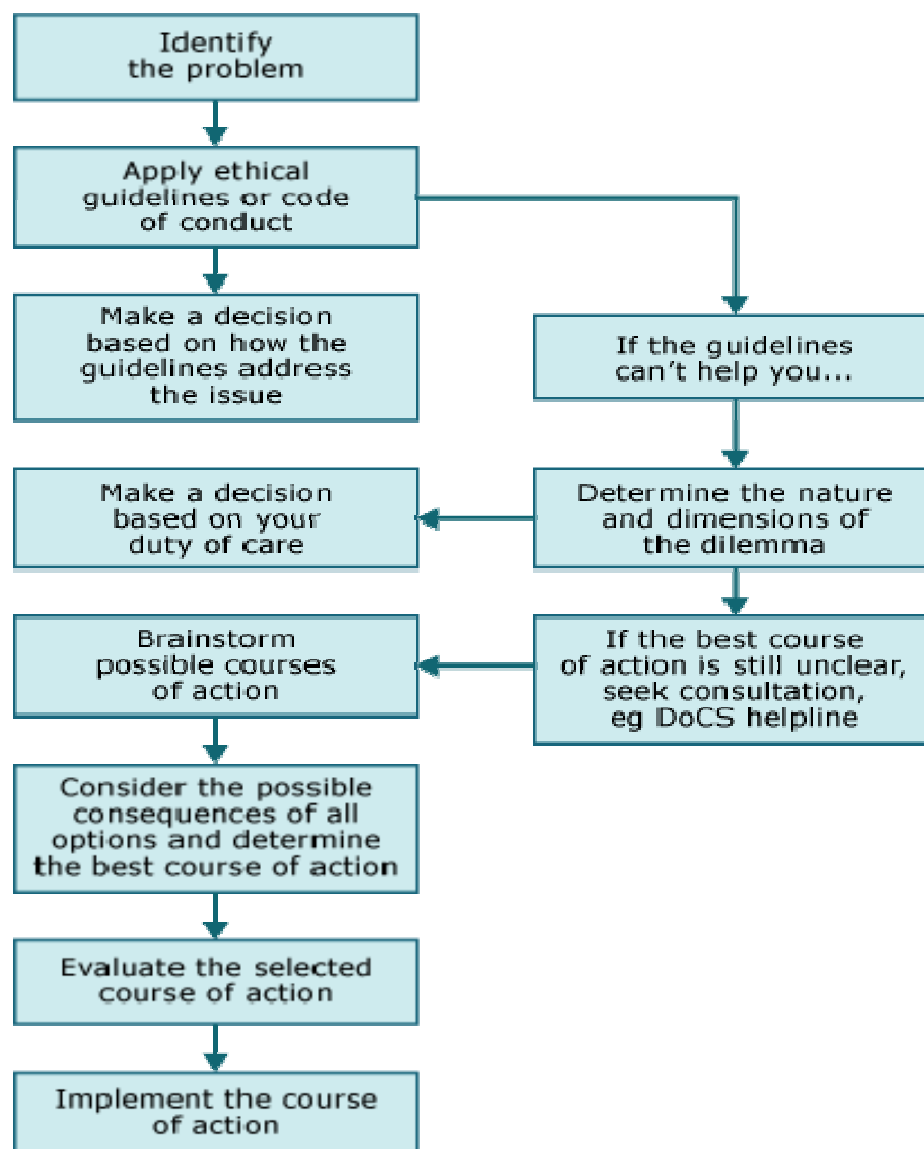
### Ethical decision making model

**The model as outlined below requires you to work through the following steps:**

1. **Identify the dilemma.** Firstly you need to look at the dilemma and gather as much information as you can to clarify the problem. For example consider if there are any legal aspects to the issue or if the situation can be defined as an ethical dilemma. It might help to consult with a work supervisor or colleague about it.
2. **Apply the code of conduct or code of ethics.** Once you have a clearer picture of the nature of the problem you need to consult the code of ethics for your profession to see if there are clear guidelines on how the issue should be addressed. Sometimes further exploration is required. There may also be a code of conduct in your agency's policy and procedures manual. Read this.
3. **Determine the nature and dimensions of the dilemma and seek consultation.** In this step you will need to ask yourself questions such as: 'What actions will have the least chance of bringing harm to the client?' 'What decisions will safeguard the well-being of the client?' 'How can I best promote self-determination?'

Sometimes the dilemma may involve other agencies or other professionals. This is a situation where you must consult with your supervisor or director. Do not try to manage on your own! At times the dilemma may involve your director or supervisor. If this occurs, it would be important to raise your concerns with them directly. If you are unable to do this, it would be appropriate to speak to someone outside the agency, such as a management committee member, a superior from head office, a worker from an outside body or in extreme cases, the police.

- Appropriate people are usually at least one level up from the person concerned and perhaps two levels up if you feel that your immediate supervisor may be biased. It is therefore useful to know who people within the service are and the organisation's relevant reporting system. Be careful to protect the identity of the client in these situations unless they have given you permission to release their personal information.
4. **Generate possible actions.** Brainstorm (with colleagues if you can) possible solutions to the problem/dilemma.
  5. **Consider the possible consequences of all options and determine a course of action.** This stage involves looking at all the options and the consequences of actions for all relevant parties, clients, colleagues, agency, profession etc.
  6. **Consider the rights and responsibilities of all people involved.** It is critical to consider the balance between rights and responsibilities of workers and clients. It is possible that as a worker you may consider that a client's actions may be putting them at risk of injury. The dilemma arises out of the responsibilities of workers to maintain a safe environment for all clients while at the same time maintaining the rights of clients to make informed choices which may have an element of risk attached to them. This is called 'dignity of risk'. It is important to consider this balance and choose alternatives which uphold the rights of clients and allow them to accept personal responsibility for their choices and actions.
  7. **Evaluate the selected course of action.** Review your selected course of action. Be careful that the action chosen doesn't raise any new dilemmas!
  8. **Implement the course of action.** You have worked through a process and should be able to justify your actions and responses. It is always useful to reflect on the effectiveness of your choices, once again with a supervisor or colleague if possible.







## Eight

### Using effective problem solving techniques when exposed to competing value systems

What problem solving techniques are effective when you are exposed to competing value systems?  
(ie a client or manager have different values that make impact on your work)?

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## Protecting the rights of the client when delivering services

As members of the Australian community we all have rights and corresponding responsibilities. The word rights are often used but what does it mean and what are our rights? Rights are our basic entitlements as members of a community.

### Some points on rights are:

1. Every person has the same rights.
2. Rights and freedoms are part of the Australian tradition, customs, value system and laws.
3. Every person has the responsibility of accepting the rights of others.
4. It is against the law (both Federal and state) for anyone to deprive you of your rights, and against the law for you to try to deprive anyone else of their rights. You can't have your rights taken away unless you are convicted of breaking the law.
5. Rights and responsibilities go hand-in-hand. If you want to exercise your rights, you must also fulfill your responsibilities.
6. Rights are linked to the concepts of social justice and empowerment (ensuring that everyone has the knowledge, skills and confidence to take control of their lives and be treated equally in society).

When considering the concepts of rights and responsibilities it can be useful to add the notion of roles. A role describes what we do in a particular situation. Consider the different things that you do throughout the day or week—be a part of a family, go to work, be a tenant or homeowner, spend time with friends, go shopping and so on. You have a role to play in each situation.

We have a right to do each of these things and we also have responsibilities while doing them. (For example, all women have the right to be a mother (role) but they have a responsibility to make sure that their children's physical, social and emotional needs are met.) Everyone has responsibilities of some kind. They may be the same as those of others or different, depending on the situation you are in and the role you play.

### Client Rights – The worker's responsibilities

#### These are to:

- Obtain a clear picture of the client's issues
- Obtain relevant information regarding current circumstances
- Research all avenues of support / Make referrals, where appropriate
- Provide a safe environment
- Make sure that the client is aware of their rights and the availability of advocacy if required
- Work with the client to establish clear and practical steps to attain outlined program objectives.

### Client Rights – The organisation's responsibilities

#### These are to:

- Provide clear information regarding service policy / available resources
- Provide formal documentation processes for planning and monitoring
- Provide access to information regarding other services when relevant
- Act in a co-ordinating role when required, with other agencies involved in the case management process
- Act as a liaison with other community services when required.

## Client responsibilities



The concept of rights cannot be viewed in isolation from the concept of responsibilities. While clients have a right to expect organisations to uphold all their rights, they also have responsibilities to fulfill as a client of a Disability and other CSI agency.

### These include:

- Letting the service know if they will not be available to attend an appointment
- Respecting the rights of staff, management, volunteers and other clients
- Taking responsibility for the decisions that they make
- Following through on tasks that have been agreed to
- Respecting and abiding by the rules of the service (as long as they are reasonable and have been agreed to in the first place).

The more we encourage clients to fulfill their responsibilities, the more we are fostering independence, which should be part of our ultimate goal in providing assistance. For example, if you are working with a young person in supported accommodation and they are continually breaking the rules, coming home after curfew, not paying agreed rent, being rude and disrespectful to staff and other residents and you do nothing about it, then what are you teaching them?

By having clear rights and responsibilities (and clear sanctions for not fulfilling responsibilities) the young person may learn that responsibilities are part of life and there are consequences when we don't fulfill them (such as being evicted). A hard lesson in life learnt early on may lead to improved life skills and a step towards independence.

## **Client's rights**

### **The right to lodge a complaint**

Clients have a right to complain if they are dissatisfied with some aspect of the service. They should be made aware of this fact and of the complaints processes used by your agency. It should be standard practice to provide this information to clients. Most agencies have a Client Grievance Policy/Procedure as part of their Policies and Procedures Manual. You should be aware of this policy and associated procedures so that you can support the client and handle the complaint appropriately.

### **The complaints process**

Most complaints management procedures follow a similar three-stage approach:

1. Solve the problem where it began: first talk to the person first with whom you have the grievance or who you believe was/is directly involved.
2. Take the grievance to a higher level, if you are unable to solve the problem with those directly involved.
3. Take the grievance to an agency which will provide advocacy.

### **Possible outcomes when handling a complaint**

- Record the grievance but take no further action.
- Investigate the grievance.
- Refer the grievance to another person.
- The client is given the choice of the action they wish to take.

### **Rights of Appeal: client complaints and grievance procedures**

If a client feels that their rights have not been upheld, then they have a right to appeal – to make a complaint about their grievance. Every organisation should have a policy for client complaints and grievances. Make sure you familiarise yourself with procedures within the organisation for which you work.

Grievance procedures can be utilised by staff and clients. These are a way of expressing concern about treatment, or about failure to comply with agreed standards of behaviour. They are a way of protecting client rights, and to ensure that clients and staff are held accountable if they do not fulfil their responsibilities.

Clients should be made aware of their right to complain should they be dissatisfied with some aspect of service. They should be informed of the processes by which these complaints can be registered. It should be standard practice to provide this information to clients. Clients should be told that they can use an advocate. An advocate represents the client's interests, and assists them to deal effectively with an organisation or service provider, should they feel unable to do this on their own.

### **The process of appeal**

This process will vary from organisation to organisation, and in accordance with the nature and seriousness of the complaint. It is the process that is followed if the client does not feel that their complaint has been heard in the first instance. Should this occur, the client could lodge a formal complaint to the service provider's supervisor or manager. The appeal process can, via internal appeal, be taken through the organisational hierarchy. If the client does not feel that their complaint is adequately addressed through internal appeal, they may choose to launch an external appeal, which may involve the Federal Court, or a peak body (an organisation which represents a group of employers or employment organisations in the Federal Court) taking part in the process.

## **The right to dignity**

Every adult considers it a basic right to be treated with dignity and respect. This involves being simply valued for being a person. For many people with health issues, their health issue is considered first and the fact that they are a person is considered second.

## **Informed choice**

As an adult you have the right to – and expect to be allowed to – make choices and decisions about what you do. Being allowed to make decisions and choices provides the individual with some level of control over their lives and gives an element of independence. Unfortunately, the right to make decisions is often questioned for people with mental health issues and/or substance use issues.

## **The right to have meaningful work**

As an adult you have a basic right to paid employment as a normal feature of life. Employment assists the individual in generating an income, fulfilling obligations and responsibilities, enhancing their status. It provides opportunities for integration and interaction in society and assists the individual in gaining a sense of self-worth. It is unfortunate that other members of society consider many people with mental issues, health or substance use problems unable and incapable of working. In these situations, it is often the attitudes of others that prevent people from having an equal opportunity of gainful employment.

## **The right to consent**

To consent means to accept or agree to something. Client involvement in the evaluation and selection of services to meet their needs is good professional practice but there is also a legal obligation to obtain client consent. Some legislation (e.g. the Child Protection Act ) and the Disability Services Act , enshrines the client's right to participate in decision-making related to case management. If you fail to gain the consent of a client before you provide a particular service or involvement, then you may be in breach of a number of civil laws.

### **Involving clients in decision-making**

After investigating the range of service options or strategies available, clients can be supported to evaluate the options using a range of methods such as:

- Trialling service options
- Asking questions
- Discussing options in small groups
- Discussing options with key stakeholders within their social networking support network
- Discussing options with others who have experienced these strategies.

### **Supporting clients in the decision-making process**

**Examples of strategies to support client decision-making could include:**

- Giving the client time and space without the support worker's involvement to adequately explore all the options and make some decisions
- Asking open questions, e.g. 'what do you think about ...?'
- Listening to the client's concerns
- Reflecting the feelings and content of client responses
- Involving a trusted friend/mentor or other key people from their support/professional networks.

## **Upholding rights of clients**

What are the ways that we can ensure client rights are upheld?

### **Keep clients informed**

Clients need to be as informed as possible about their rights and responsibilities. Comprehensive information about the service should be provided at the referral and assessment stage, including information about the eligibility criteria (who can use the service), the assessment process, service rules, services offered, staff qualifications, confidentiality exclusions, client rights and responsibilities, complaints procedure and any fees involved. This can be in the form of an information handbook or pamphlet and should be in a format accessible to clients. For example, translated into relevant languages or in simple format for a client with an intellectual disability.

### **Client participation forums**

Agencies need to have a structure in place for clients to have a say about the services being offered and what needs to be improved. This may be through representation on management committees, holding focus groups and surveying regularly to seek client feedback.

### **Monitoring by funding bodies**

This varies across government departments and funding programmes; however funding bodies should play a role in ensuring that services are fulfilling their legislative and funding responsibilities in the area of upholding client rights. This may be through visiting agencies occasionally or written reports provided every year as part of the accountability process.

### **Making sure that clients know how to complain**

Basic human rights include the right to be heard—better still, some rights, like legal rights, mean being able to take action to recover any lost rights or even seek compensation. Legitimate client complaints also provide valuable feedback to the service, so that services and staff can improve. Legitimate client complaints also provide valuable feedback to the service, so that services and staff can improve.



## Nine

### Protecting the rights of the client when delivering services

1. What processes does your agency use to inform clients of their rights?

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2. Can you describe a situation where you or a work colleague have had to advocate for a client or have had to help a child advocate on their own behalf to ensure their rights were met?

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3. Was the process successful? Why or why not?

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### **Code of ethics for community service workers**

4. What do you think might be the kinds of guidelines in a code of ethics for community service workers? For example: confidentiality an important guideline for CSI workers to follow.

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# **Recognising unethical conduct and report to an appropriate person**

## **A legal framework**

Working out what is a legal obligation rather than an ethical consideration or simply a service specific policy or practice can be quite confusing. The following guidelines should help you begin to understand the differences (based on Stonehouse , 1998).

### **Legal obligations are:**

- Mandated by law
- Punishable under the law if breached
- Usually quite specific about what is required and allowed
- The minimum standards required
- Related to particular services or work settings.

### **Ethical standards (or codes of practice) are:**

- Voluntary rather than mandated by law
- Not formally enforced
- A set of broad principles or aims based on best practice
- Focussed on what is desirable and optimal
- Developed and monitored from within the group they apply to
- Targeted at individuals within a profession or work setting.

### **Policies and practices are:**

- Detailed statements and explanations of actions to be taken in particular situations
- Usually specific to and developed by individual services
- Informed by legal obligations and ethical considerations
- Monitored and enforced through service management procedures.

**Unethical conduct is when you can see that another person is not adhering to professional ethics and is behaving in a way that puts clients at risk.**

### **Examples of unethical conduct could include situations when:**

- A fellow worker is overheard gossiping about a client at the local pub
- A fellow worker is openly intolerant of other cultures and says negative things about people belonging to different cultures
- Two workers argue with each other in front of clients.

A code of ethics helps us to identify unethical situations, and is therefore important to think about regularly. It should never be a dead piece of paper stuck at the back of the filing cabinet.

## **Reporting unethical conduct**

When you recognise another worker's unethical act, your first option is to confront the worker yourself and discuss the issue. If that is not successful you may need to report the unethical conduct to someone in higher authority. You will certainly need to report the conduct if the rights of others, as outlined in the code of ethics, are not being respected.

### **When reporting unethical conduct, you need to be clear:**

- Who was involved
- When the incident(s) occurred and who else was present
- The grounds on which you believe the conduct to be unethical, and
- What other actions you have taken eg spoken to the person

When considering reporting unethical conduct, you need to access your agency's policy and procedures to know who to direct the report to.

## Recognising witnessed signs consistent with financial, physical, emotional, sexual abuse and neglect of the client and report to an appropriate person as required



### Types of harm/abuse experienced by clients

Everyone who is employed to support or work with clients in the CSI has a legal, moral and ethical responsibility to ensure the physical and emotional safety and well-being of those people. At times, however, clients can live in situations or have experiences in their lives that are unsafe or where their wellbeing is threatened.

**If we are to protect clients from abuse and neglect it is important that we understand what is meant by these terms:**

- **Abuse:** physical and emotional pain or harm that is inflicted by one person on another. Threatening to inflict pain or violence is also considered abusive
- **Neglect:** not providing appropriate care and protection or meeting the physical, emotional and social needs of someone in your care
- **Risk:** exposure to the chance of emotional and/or physical abuse or neglect.

### Physical assault

This is any touching of another person that is harmful, offensive or unwanted.

#### Examples include:

- Hitting, slapping, pushing, burning
- Physical restraint
- Over- or under-medication.

### Sexual assault

This is when a person is subjected to sexual activities without their consent.

#### Examples include:

- Penetration of the vagina, anus or mouth by a penis, by any part of the offender's body or any object manipulated by the offender
- Sexual and genital fondling
- Unwilling exposure to exhibitionism or masturbation
- Suggestive behaviours, and comments that are inappropriate or make the person feel uncomfortable or intimidated
- Exposure to pornography.

**Emotional abuse**

Abuse that causes a person to feel fear, anxiety, loss of self-worth and rejection, through threats and humiliation.

**Examples include:**

- Severe verbal abuse
- Continual rejection
- Physical or social isolation
- Threats of abuse
- Harassment
- Frightening, dominating or bullying actions
- Humiliation
- Withholding of affection
- Threats of institutionalisation.

**Financial abuse**

This is when a person is taken advantage of financially when their judgement is impaired. For example, a person with an intellectual disability is convinced to spend their money on an unscrupulous 'friend'.

**Systems abuse**

This is where bureaucratic processes are so tedious and involve so much hassle for the client that they feel very powerless and frustrated. For example, a child may be placed in foster care due to an unstable home environment, yet be subjected to a number of inappropriate foster placements, with a lack of continuity of carers and lengthy stressful court appearances.

**Victimisation**

This means singling someone out for unfair punishment or treatment.

**Examples include:**

- Verbal and physical harassment
- Inciting others to abuse or harm.

**Neglect**

This is the lack of reasonable care or attention; carelessness can also be considered as neglect.

**Examples include:**

- Failure to provide adequate support, food, shelter, clothing or hygienic living conditions
- Failure to provide adequate information and education in the use of poisons, alcohol or other drugs
- Nutritional, medical or other physical needs being ignored or withheld
- When an individual is deprived of the basic human interactions required for the development of social behaviour.

**There are many reasons why people may not tell someone about the abuse or neglect. This can be because:**

- They may not have the necessary language or verbal communication skills
- They are unsure who it will be safe to tell
- They don't understand what is happening to them and that it is abusive and denying them their rights
- Previous attempts at communicating the abuse or neglect have been ignored
- They think that no one will believe them
- The person who is abusing them has threatened that they or someone they love will be harmed if they tell
- They may blame themselves for what is happening and take responsibility (inappropriately) for the abuse
- They may be ashamed and want to hide the abuse.

Even if someone doesn't tell you about the abuse or neglect there are usually some signs or indications of what is going on. Therefore, it's important to look at someone's behaviour and to think about why they may be behaving in that way. Never make assumptions or just label the behaviour as difficult or inappropriate but, rather, think about the behaviour as being a response to something that is happening.

## Strategies for reporting abuse of a client

In the CSI, there are a number of rules and regulations that relate to client care and client services in the community. They exist to ensure that, among other things, clients' rights to be free of abuse and neglect are upheld. Community service organisations, including community-based and government services, have to comply with a minimum set of legal requirements. These vary according to the target group, but some legislation operates across all service types, such as Workplace Health and Safety and the Anti-Discrimination Act. As a worker, you need to have current knowledge of the legislation that directly impacts on the target group you are working with.

### Workers' responsibility to report

One of the overriding requirements in relation to abuse and neglect throughout all of the relevant legislation is that as a worker in the CSI, if you suspect that someone is being abused or neglected or is at risk of these occurring you have a responsibility to report it. The following are general guidelines about what kind of incidents should be reported, to whom they should be reported and how. It is important to note that each organisation should have its own specific guidelines to be followed.

### What incidents should be reported?

#### The following situations should always be reported:

- If a crime has been alleged, such as assault
- Critical incidents such as a person harming themselves or others, threatening people with harm or damaging property
- Dangerous environments, such as trip hazards, faulty electrics
- Recurring and unexplainable medical or dental problems
- Complaints such as those relating to staff and service delivery
- Changes in a person's behaviour.

### Who should incidents be reported to?

Generally speaking, in situations where you are concerned that abuse or neglect may be occurring, you need firstly to report it to your direct supervisor or manager. The situation may then involve reporting to a senior manager, the organisation's board of management, the police or to the NSW Department of Community Services, depending on the nature of the situation, the circumstances and the age of the person involved.

It can be very stressful to be in a position where you have such concerns about the treatment of a client, particularly if it involves suspecting one of your colleagues. It is often a 'load off your mind' to formally share your concerns with someone in a position of authority, as well as being important to follow agency policy and procedure. Of course, if you have a serious concern about the behaviour of a person in authority, you may need to take your concerns to your board of management. This obviously needs to happen in a confidential manner. And, don't forget that people are innocent until proven guilty.

## **Policy and procedure for reporting suspected abuse of a client**

### **Organisational reporting policy and procedure should generally include:**

- Clear guidelines about what kind of incidents should be reported
- Ensuring the person is safe (are they in any immediate danger in the situation, eg from an abusive carer)
- Putting the incidents in writing as a way of keeping a record of what is happening for the person (keeping this very factual and objective)
- Using the written record as a way of formally briefing management, factually and timely (it is no good submitting a report weeks after your concern becomes apparent)
- Ensuring that there is a timeframe for action (is the issue urgent? What investigation needs to be achieved and by when?)
- Feedback processes. What happens next? Who needs to be kept informed?

As a worker, you need to be clear on your role in the reporting on abuse and neglect. It is your responsibility to identify potentially abusive situations and bring them to the attention of management, via the agency's policy and procedures. It is not your role to investigate the allegation or potential abuse. Leave that role to management, the police or perhaps even a Child Protection Officer of the Department of Community Services, depending on the nature of the situation.

### **Barriers to responding to or reporting situations of risk**

Though policy and procedure may state very clearly that incidence of abuse and neglect must be reported, it is not always so simple in practice. There are many barriers to staff responding to or reporting abuse or neglect. The reasons for staff not responding are many and varied and range from personal barriers through to organisational and social barriers. Put yourself in the shoes of a worker who suspects that another staff member may be physically abusing a client.

### **Children, Youth and Families Act 2005 (Vic.)**

In Australia, state and territory governments are responsible for the administration and operation of child protection services. Legislative Acts in each state and territory govern the way such services are provided.

#### **Related acts are:**

- Working with Children Act 2005 (Vic.)
- Child Wellbeing and Safety Act 2005 (Vic.)
- The Charter of Human Rights and Responsibilities Act 2006 (Vic.)
- Family Law Act 1975 (Cth)
- The Commission for Children and Young People Act 2012

### **Who is mandated to make a notification?**

The legislation generally contains lists of particular occupations that are mandated to report. The groups of people mandated to notify cases of suspected child abuse and neglect range from persons in a limited number of occupations (e.g., Qld), to a more extensive list (Vic.), to a very extensive list (ACT, NSW, SA, Tas.), through to every adult (NT). The occupations most commonly named as mandated reporters are those who deal frequently with children in the course of their work: teachers, doctors, nurses, and police.



## **What types of abuse are mandated reporters required to report?**

In addition to differences describing who is a mandated reporter across jurisdictions, there are differences in the types of abuse and neglect which must be reported. In some jurisdictions it is mandatory to report suspicions of each of the four classical types of abuse and neglect abuse (i.e., physical abuse, sexual abuse, emotional abuse, and neglect). In other jurisdictions it is mandatory to report only some of the abuse types (e.g., Vic., WA). Some jurisdictions also require reports of exposure of children to domestic violence.

It is important to note that the legislation generally specifies that except for sexual abuse (where all suspicions must be reported), it is only cases of *significant* abuse and neglect that must be reported. Reflecting the original intention of the laws, the duty does not apply to any and all "abuse" or "neglect", but only to cases which are of sufficiently significant harm to the child's health or wellbeing to warrant intervention or service provision. However, reflecting the qualitative differences presented by sexual abuse as opposed to other forms of abuse and neglect, five jurisdictions apply the reporting duty to all suspected cases of sexual abuse without requiring the reporter to exercise any discretion about the extent of harm which may have been caused or which may be likely (ACT, NT, SA, Tas., WA).

### **In Victoria the following professionals are mandated to make a report are:**

- Registered medical practitioners
- Midwives, registered nurses
- A person registered as a teacher under the *Education, Training and Reform Act 2006* or teachers granted permission to teach under that Act;
- Principals of government or non-government schools
- And members of the police force.

There must be Belief on reasonable grounds that a child is in need of protection on a ground referred to in Section 162(c) or 162(d), formed in the course of practising his or her office, position or employment

- Physical abuse
- Sexual abuse

## Child Protection Legislation in Australian States and Territories

JURISDICTION	PRINCIPAL ACT	OTHER RELEVANT ACTS/LEGISLATION
<b>Australian Capital Territory</b> (Office for Children, Youth and Family Support, Department of Disability, Housing and Community Services)	<i>Children and Young People Act 2008 (ACT)</i> (NOTE: Not all provisions are in force)	Adoption Act 1993 (ACT) Human Rights Act 2004 (ACT) Human Rights Commission Act 2005 (ACT) Public Advocate Act 2005 (ACT) Family Law Act 1975 (Commonwealth)
<b>New South Wales</b> (Department of Community Services)	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>	Children and Young Persons (Care and Protection) Amendment (Parental Responsibility Contracts) Act 2006 (NSW) Child Protection (Offenders Registration) Act 2000 (NSW) Crimes Act 1900 (NSW) Commission for Children and Young People Act 1998 (NSW) The Ombudsman Act 1974 (NSW) Family Law Act 1975 (Commonwealth) Reform: Children and Young Persons (Care and Protection) Amendment Bill 2009—introduced to make further provision with respect to out-of-home-care designated agencies and the provision of information to the Children's Guardian and the Director-General of the Department of Community Services
<b>Northern Territory</b> (Children, Youth and Families, Department of Health and Families)	<i>Care and Protection of Children Act 2007 (NT)</i> (NOTE: Not all provisions are in force)	Information Act 2006 (NT) Disability Services Act 2004 (NT) Criminal Code Act 2006 (NT) Family Law Act 1975 (Commonwealth)
<b>Queensland</b> (Department of Communities)	Child Protection Act 1999 (Qld)	Commission for Children and Young People and Child Guardian Act 2000 (Qld) Education (General Provisions) Act 2006 (Qld) Public Health Act 2005 (Qld) Adoption of Children Act 1964 (Qld) Family Law Act 1975 (Commonwealth)
<b>South Australia</b> (Families SA; Department for Families and Communities)	Children's Protection Act 1993 (SA)	Young Offenders Act 1994 (SA) Adoption Act 1988 (SA) Children's Protection Regulations 2006 (SA) Family Law Act 1975 (Commonwealth) Family and Community Services Act 1972 (SA)
<b>Tasmania</b> (Child Protection Services, Department of Health and Human Services)	Children, Young Persons and their Families Act 1997 (Tas)	The Family Violence Act 2004 (Tas) Family Law Act 1975 (Commonwealth)
<b>Victoria</b> (Children Protection and Juvenile Justice Branch; Department of Human Services)	Children, Youth and Families Act 2005 (Vic)	Working with Children Act 2005 (Vic) Child Wellbeing and Safety Act 2005 (Vic) The Charter of Human Rights and Responsibilities Act 2006 (Vic) Family Law Act 1975 (Commonwealth)
<b>Western Australia</b> (Department for Child Protection)	Children and Community Services Act 2004 (WA)	Working with Children (Criminal Record Checking) Act 2004 (WA) Family Court Act 1997 (WA) Adoption Act 1994 (WA) Family Law Act 1975 (Commonwealth)

## Financial/material abuse

The illegal or improper use of the person's property, resources, finances and other assets without their informed consent or where consent is obtained by fraud.

### Examples of financial abuse:

- Denying a person access to or control over their money, assets when they have a demonstrated capacity to manage their own finances
- Denying a person access to information about their personal finances
- Taking a person's money or other property without consent (which is likely to also constitute a criminal offence) misappropriation of money, forging signatures on cheques
- Forced changes to wills or other legal documents, misusing power of attorney
- Using a person's belongings for personal use (e.g. using a person's vehicle for our own purposes, borrowing possessions even for a brief period, e.g. CDs, lawn mowers, personal use of phone by staff which is not recorded or reimbursed leaving the person to pay the cost of the calls).

## Elder abuse



Elder abuse is a term referring to any intentional or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult. While elder abuse does not receive as much attention as the issue of child abuse, and while the incidence rate is lower, older people can be abused physically, emotionally, sexually and financially.

### Elder abuse can take the following forms:

- Physical, eg: slapping, hitting, beating, burning, biting, inappropriate restraint etc
- Emotional and psychological, eg: name-calling, intimidation and other acts that cause mental or emotional pain, anguish and distress
- Sexual, eg: non-consensual sexual contact of any kind, coerced nudity
- Exploitation, eg: illegal taking or misuse property or assets
- Abandonment
- Neglect, eg: failing to meet the older person's physical, social, emotional needs, failure to assist with activities of daily living or help with personal hygiene. Financial, eg: misuse of funds, fraud, forgery, forced property transfers.

Abuse or neglect is more likely to occur when an older person is dependent on others for assistance or care, with the person involved usually in a position of trust and known to the older person. Older people of any ethnic background, gender and social status can be affected. The Aged Care Act 1997 requires approved Aged Care providers to report physical and sexual assault (Elder Abuse) on a resident of an Australian Government subsidised Aged Care home. Aged Care providers must have systems and protocols in place that enable compulsory reporting of such incidents.



## Ten

### **Recognising witnessed signs consistent with financial, physical, emotional, sexual abuse and neglect of the client and report to an appropriate person as required**

1. Think about possible situations of risk for people with disabilities who are living in supported accommodation. From your knowledge of the CSI or what you may have heard about, what practices might exist (or did exist in the past) that place a person with a disability at risk of abuse and neglect?

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2. Briefly outline the worker's statutory obligations in relation to notification of risk of abuse, neglect or harm in your State or Territory.

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3. What are some of the implications of notification in relation to client confidentiality?

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**Scenario**

You are a worker at a family support service. Deirdre is a young woman with two small children who attend the family support playgroup every Tuesday. Deirdre has been coming to the group for a few months. She enjoys meeting other mothers and giving her children an opportunity to play with others. You develop a supportive relationship with Deirdre, providing her with emotional support and linking her with community resources, such as childcare.

For the past couple of weeks, Deirdre has become very withdrawn and stopped attending the playgroup. The last time she came to the group, she was wearing a long-sleeved top, which covered her neck, despite very high temperatures. You suspect that Deirdre has been physically abused but she is very reluctant to admit this to you.

4. Why do you think Deirdre may be reluctant to speak up?

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5. What are some of the barriers that may stop you from taking appropriate action (that is, reporting your concerns to your manager)?

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## Eleven

### Recognising unethical conduct and reporting to an appropriate person

**Respond to the following incidents by completing the information you would put in a report.**

A service director instructs you to go and borrow equipment from another service down the road, as your service is being inspected today and it is short on essential equipment.

- (a) Who was involved?
- (b) When the incident(s) occurred and who else was present.
- (c) The grounds on which you believe the conduct to be unethical.
- (d) What other actions you have taken, e.g. spoken to the person.

**Your response:**

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## Recognising potential and actual conflicts of interest



**It is quite possible that in our work life, there will be a conflict of interest between our:**

- Own personal values, or those of our family and friends
- Our professional values
- Organisational values
- The values or policy of the public service.

When there is conflict of the above interests, it is important to recognise them and to solve the conflict in an ethical manner. When personal values and interests are pursued in work time, or you are using information only accessible to you as a worker for the benefit of yourself, family or friends, a conflict of interest exists.

### **What is conflict of interest?**

We can define a conflict of interest as a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee, or a professional. A conflict of interest arises when a person or persons involved in a given situation may have conflicting loyalties, may gain some benefit from promoting an outcome of a situation or have ulterior motives for appearing to assist someone.

### **Conflict of interest may include:**

- Accepting bribes, gifts or favours for services performed as part of official duties
- Improper use of official information
- Giving favours to friends or relatives
- Outside employment or activities that interfere with your ability to perform your duties in a professional manner
- Membership of an organisation or political activity that interferes with you professionally performing your duties
- Pecuniary (money-related) or non-pecuniary conflict.

### **Real (or actual) conflict of interest**

A real (or actual) conflict of interest exists where an employee's private interests have interfered with their duties or are likely to do so.

### **Apparent conflict of interest**

An apparent conflict of interest exists where it appears that an employee's duties may be affected by personal interest, even though this may not be the case. It is important therefore to reflect on areas that may be potential conflicts of interest for you and consider whether your actions or decisions may be influenced by your personal values that are in conflict with organisational expectations.

As a community services support worker, it is not recommended that you provide services to someone with whom you have dealings in your personal life, such as a neighbour or a school friend of your daughter. This can be a challenge in rural, remote and regional areas where you tend to be more identifiable as a member of the community. If you are asked to provide advice or support to someone you know in a personal capacity, you need to advise your supervisor of this and together work out a suitable approach to the problem.

**When a conflict of interest occurs it is important for the support worker to:**

- Immediately point out the conflict of interest to the client and/or any appropriate individuals or organisations
- Specify exactly what the conflict of interest is
- Use an independent advocacy organisation
- Help to find another advocate - if this is the situation you must explain to your client why you cannot represent them
- Remove the conflict from the issue - if, for example, the conflict is from family members, take the issue outside of the family situation
- Agree to act as an advocate for some elements or issues but not those involving the conflict of interest.

**Resolving a conflict of interest**

Where you think that a private interest could be influencing a decision or action of yours, it is important to immediately discuss this with your supervisor or manager.

**As a result, your supervisor may:**

- Re-arrange your duties in relation to this conflict
- Advise you to discontinue your private association or interest
- Advise you to continue with your duties
- Subject you to certain conditions

If you do not discuss conflicts of interest with your supervisor and decide on appropriate action yourself, your supervisor may not understand your decision. For example, if you opt out of a selection panel because your best friend is an applicant, your supervisor may not be aware of the circumstances and misinterpret this as you just not being interested or available for such tasks. It is important therefore to reflect on areas that may be potential conflicts of interest for you and consider whether your actions or decisions may be influenced by your personal values that are in conflict with organisational expectations.





## Twelve

### Recognising potential and actual conflicts of interest

Name some potential conflicts of interest/values that could arise when working with clients in the aged care/disability sector – give strategies on how you would overcome these

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## Element 3: Contribute to workplace improvements



### Identifying situations where work practices could be improved to meet legal and ethical responsibilities

A key to ensuring that you are fully aware of your work responsibilities and the responsibilities that your employer and colleagues also hold is to take an active part in identifying and implementing improved work practices. This will ensure that you are part of the ongoing improvement processes and are able to contribute to establishing practices that will work for you.

The first step is to clarify the most appropriate means of communication with regards to improving work practices. Decide (with other team members) the most appropriate way in which work practices should be discussed. It may be worthwhile to highlight the advantages, the disadvantages and the potential consequences of particular means of communication, or any other ideas the team generates. The potential options can then be presented to your work colleagues for further consideration and discussion. This will enable feedback and allow for further reflection upon some of your ideas. The ideal outcome is the improvement and streamlining of these ideas to the point where they are acceptable to everyone in the workplace.

Any skill or knowledge gaps should also be identified and acted upon in time to support the desired change. It may also be appropriate to locate any available resources and support materials in order to formulate workable and sustainable solutions. It is important that the organisational objectives of a business or service provider are understood and supported by all members of its work force. Members of a team need to know why they are attempting to achieve certain goals.

Work practices are the tangible embodiment of those organisational objectives, as they are the practical measures that need to be taken in order to achieve them. So now let's look at some areas in which we can contribute to identifying and implementing improved work practices. These are suggestions only and each practice or organisation will have their own.

#### **Areas for continuous improvement (and many overlap) include:**

##### **Infection control, including:**

- Methods of hand-washing
- Defined areas of contamination
- Handling and disposal of sharps
- Management of body/body fluid exposure

##### **WHS, including:**

- Ergonomics
- Materials safety data sheets (MSDS)
- Personal protective equipment requirements (PPE)
- Waste disposal
- Environmental responsibility.

**Client service, including:**

- Responsiveness to clients
- Telephone technique
- Meeting and greeting
- Confidentiality and privacy
- Cultural awareness.

**Office procedures, including:**

- Quality control
- Servicing equipment
- Accounts process
- Computer programs
- Security issues.

**Workplace conduct, including:**

- Ethical behaviour
- Vicarious liability
- Workplace conflict / Workplace harassment.

**Emergencies, including:**

- Fire escapes
- Smoke alarms
- Bomb threats
- Medical emergencies.

**Working safely and enhancing client safety**

The culture within an organisation is made up of all the attitudes, beliefs, expectations, and actions of everyone involved. Developing a culture of safety in the workplace is a strong, positive step towards workplace health and safety management. A culture of safety encourages teamwork, effective communication, the expression of new ideas, cooperation and flexibility.

**A culture of safety should be the aim of every service because it means:**

- Decreased risk of injuries to clients, visitors and workers
- Decreased costs associated with injuries
- Decreased absenteeism because of injury or work-related stress
- Strengthening of the organisation's image within the community as one of quality and professionalism.

**The key points in developing a strong, positive culture of safety are:**

- Commitment and consultation
- Documentation
- Evaluation and continuous improvement
- Training
- Open communication.

As a worker in your particular setting, your participation is important to the success of workplace health and safety (WHS) management.



### Thirteen

#### **Identifying situations where work practices could be improved to meet legal and ethical responsibilities**

In your organisation, what is the system for making suggestions on how work practices could be improved to meet ethical responsibilities and legal policies and procedures?

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## **Pro-actively sharing feedback with colleagues and supervisors**

In most organisation you will find as part of your employment; you will be required to take part in performance appraisals. This can include self-evaluations prior to your meeting to discuss your performance appraisal. Some organisations have systems in place for staff to do self-evaluations on their work skills and knowledge. This enables staff to review their skills and knowledge and assists the organisation to provide training for staff. Become familiar with the organisational requirements relating to reflecting on your own practices.

### **Provide and receive feedback from colleagues**

#### **Providing feedback**

The provision of feedback is an important tool when working with both staff and clients. Feedback given in a positive way enables us to promote effective work and social practices and correct those practices that may have a negative effect. It also enables us to model appropriate behaviour to others.

Feedback provides the receiver with positive reinforcement for what they are doing well, and an opportunity to correct any behaviour that could be improved. Feedback should always be directed at actions rather than at the person, it is not about a person being good or bad, but rather acting in an appropriate or inappropriate way. Feedback needs to be culturally appropriate, and non judgmental if it is to be effective.

Feedback is also part of performance appraisal processes if your organisation has this in place. Within this process the worker is encouraged to identify their own strengths, develop goals for the future and receive feedback on their performance from their supervisor. It also provides an opportunity for the worker to give their supervisor feedback on their performance in the workplace.

Feedback used positively can assist a person to grow and develop, and also supports a positive workplace culture. When working with clients feedback can be used to assist the client understand their own strengths, and also areas that they can work on for the future.

### **Actively seek feedback relevant to work role**

#### **Feedback**

Asking for advice or feedback is part of our responsibility as workers.

#### **It gives accurate indication of:**

- How effective (as workers) we are
- What we need to change
- What work practice or skills we need to develop
- How our performance meets standards .

Our attitude toward receiving feedback needs to be positive. We need to seek feedback from people/residents/clients and colleagues in a positive manner. This encourages them to be honest and open with us. If we see feedback as a threat and get personally upset, this will not encourage our improvement or confidence in our skills.



## Fourteen

### Pro-actively sharing feedback with colleagues and supervisors

1. Identify the key strategies that you would use to provide effective feedback in a situation where not all of your feedback will be positive?

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2. Identify a situation in which you received negative feedback and describe it below.

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3. How did you respond to the feedback? How did you feel?

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## Identifying and taking opportunities to contribute to the review and development of policies and protocols



All workplace policies need to be reviewed periodically to assess their effectiveness and highlight improvements that may be needed. This review process may include seeking feedback from other workers and managers, and clients may also provide input. In your role you are able to affect change within your organisation by contributing to the review and development of policies and protocols. You can do this by providing feedback to your manager informally when you see an opportunity for improvement. Other ways that staff can contribute to reviews of workplace policies include discussions at team meetings, general staff meetings, staff appraisals and by responding to direct requests from management.

### **Policies should be reviewed:**

- When there is a change within the legal requirements, eg. A new act of parliament (legislation) or regulations
- Regularly as part of your service's annual review and planning time
- For accreditation purposes
- As new information on best practice emerges
- When you notice that a policy or procedure contradicts a legal or ethical direction, for example, staff are increasingly working alone in a domestic violence service, despite ohs legislation contradicting this practice; and
- When incidents are occurring that indicate the policy is not working, eg. An increasing number of stress-related leave applications being placed by staff despite a stress reduction policy.

### **Your contribution**

You are required to be familiar with the policies and procedures of your employer's organisation and to act in accordance with these. Most workplaces have committees made up of management representatives and workers to regularly review the policies and procedures of the service. By being aware of your own professional code of ethics, your job description and your workplace requirements, you are in a good position to be aware of any policies or procedures that could be improved or need replacing. You may be able to be a part of a committee itself or you may ask to contribute to such development within your workplace. There may also be legislative requirements on which you and other workers need to acquire knowledge.

As you update and improve your expertise, you are gaining new knowledge and skills on good practice based on current service methods. This may lead you to make suggestions to your team or the person in charge about new or modified policies, so that the service is up to date with current issues. For example, you may learn from reading that there is a better way to provide some aspect of service than your service is presently offering. You may want to bring this (or some other matter) to the attention of the other staff or even the person in charge. You may make a suggestion which is accepted and this could lead to a change of policy in this matter. This could result possibly in a change for the betterment of clients.

## **How to contribute**

How you contribute is very important. No service wants to hear something that is presented as a criticism.

### **If you have a suggestion about a changed or new policy idea, you should:**

- Discuss it first with your supervisor; and
- Ask if it could be discussed at a team meeting to see if others hold similar views or have further knowledge on the topic.

If the new information is seen as important to act on, make sure there is a 'who' and a 'when' next to it. That means someone is responsible for following it through and developing the policy or protocol, and that there is some time when they need to report back on it.

### **You can contribute by:**

- Identifying new knowledge
- Being familiar with current policies and protocols
- Being willing to make suggestions and contribute to discussions; and volunteering to follow things up if others are unable to.

## **Helping review policies and procedures**

Given that policy and procedures are subject to change, it is important to understand the role you might be able to play in this process. For instance, you may be approached to assist because you are a stakeholder or because you have expertise in the policy or procedure that is being reviewed. Ensure that your supervisor is aware of the activity, if you are contributing to the review of policy or procedures, particularly if there is no reference to this activity in your position description.

### **There are a number of ways in which you might be called upon to help with the review and/or development of policy and procedures:**

1. You could help with clarifying the issues surrounding the policy or procedure. You might help gather information which will contribute to informed debate and decision-making with respect to the new or revised policy. This might involve accessing a range of people, documents and existing policies.
2. You could provide feedback on proposals for new or reviewed policy and procedures. This helps identify all the potential issues surrounding the proposal. You might be asked to comment on a particular plan developed by a policy development team, to ensure that all issues impacting on your work area are dealt with.
3. You might provide briefing materials on policy issues, such as briefing papers outlining the key issues.
4. You might promote discussion on the policy or procedure and lead small groups of stakeholders in debating these issues.

## **Identifying stakeholders**

Many people in, and connected to, the organisation, will be interested in being involved in policy development or review because they are likely to be affected by any changes. These people are referred to as stakeholders. It is very important that you accurately identify and then engage with the stakeholders associated with a policy or procedure. Serious problems can arise if you fail to secure the contribution of a key stakeholder.



**Stakeholders can include (among many others):**

- Clients
- Members of the clients' social network
- Staff within your organisation
- Your management team
- Other government agencies
- Community groups
- Lobby groups
- Health care providers
- Individual citizens
- Citizens/communities who live or work in a geographic 'place'
- Peak organisations
- Academics and other experts.

**Involving stakeholders**

To involve all those interested in and affected by this process, strategies need to be put in place to ensure everyone is able to contribute.

**Some strategies for involving stakeholders include:**

- Asking questions
- Raising issues for discussion
- Requesting feedback and comment
- Requesting information about specific topics/issues
- Clarifying the value of particular processes
- Proposing joint problem-solving forums.

**Asking questions**

The ability to frame questions is a key skill for any person who is involved in the review or development of policies and procedures. When you are engaging with stakeholders, asking the right questions can stimulate informed debate.

**Possible questions to ask could include:**

- What is the value base of this particular policy? (e.g. equality and equity)
- Is it different from the organisational value base?
- For what reason has the policy been formulated in the past or should it be formulated now?
- Who will benefit?
- How will they benefit?
- Does any present policy cover all the dimensions of this current issue or do gaps exist?

**These may be answered using any of the following techniques:**

- Seeking written feedback
- Staff forums/meetings
- Individual interviews.

## SWOT Analysis and Brainstorming



Two useful methods for continuing the process of informed debate for the development and review of policy include:

- SWOT analysis
- Brainstorming.

**SWOT Analysis:** involves looking at an issue, or proposal, from the point of view of its:

1. Strengths (Positives) .
2. Weaknesses or Areas for improvement (Negatives) .
3. Opportunities.
4. Threats.

### When do you use SWOT?

A SWOT analysis can offer helpful perspectives at any stage of an effort.

#### You might use it to:

- Explore possibilities for new efforts or solutions to problems
- Make decisions about the best path for your initiative. Identifying your opportunities for success in context of threats to success can clarify directions and choices
- Determine where change is possible. If you are at a juncture or turning point, an inventory of your strengths and weaknesses can reveal priorities as well as possibilities
- Adjust and refine plans mid-course. A new opportunity might open wider avenues, while a new threat could close a path that once existed.

### Brainstorming

Brainstorming is a group technique for gathering creative ideas at a staff meeting or similar. It is a method of getting many ideas up in front of people quickly and without judgement. Brainstorming is used to gather new ideas. In an organisational setting, these ideas are often gathered to solve problems or to design something new. It would be very useful in the policy development process.



## Fifteen

### Identifying and taking opportunities to contribute to the review and development of policies and protocols

1. In your role as disability/aged care worker how can you be involved in the review and development of policies and protocols?

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2. What options are available for you to access relevant skill development opportunities and how do you initiate action in consultation with manager to get these opportunities?

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## **Continuing professional education**

Professional development is your responsibility. Check on your organisations policy for staff development and training.

### **Appropriate people:**

- Supervisor
- Manager
- Organisations HR department
- Outsource and talk to Registered Training Organisations .

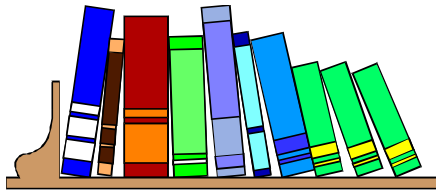
### **Ongoing training**

Training programs and educational opportunities vary in length from short courses, to improve skills in certain areas, to longer formal courses with a recognised qualification at the end of the course. It is important that you upgrade and learn new skills. Outcome Standard 1.3 on Education and Staff Development states that management and staff should have appropriate knowledge and skills to perform their roles effectively. Taking part in training sessions will enhance your knowledge of contemporary practices and understanding of responsibilities.

### **Common training programs in facilities could be:**

- Initial orientation
- Manual handling
- Fire/ emergency / evacuation
- Equipment specific training
- Dementia care
- Continence
- Medication
- Documentation

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- Working the System (1996), Public Interest Advocacy Centre.

### Useful contacts and websites

Human Rights and Equal Opportunity Commission: <http://www.hreoc.gov.au>

Australian services Union: <http://auservices.labor.net.au/industry/sacs/>

## CHCLEG001 Work legally and ethically



### Assessment tasks

Complete the following tasks. These tasks must be submitted to your trainer as they form a major part of your assessment for this unit.



#### Assessment task 1:

**Identifying, accessing and interpreting sources of information about the legal requirements that apply to the work role**

#### (Questions and written responses)

I. Explain the role of each of these in Australia's legal system:

a) Legislation.

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b) Court rulings.

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c) Civil action.

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d) Contracts.

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2. Explain the principles of access and equity relevant to providing services.

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3. Explain how you have managed common legal issues relevant to your work, such as:

a) Consent.

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b) Assault and battery.

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c) Bailment.

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d) Negligence.

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e) Defamation.

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4. What legislation governs your sector? Are there particular jurisdictions?

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## **Assessment task 2:**

### **Identifying the scope and nature of own legal responsibilities**

#### **(Questions and written responses)**

##### **Clarifying the scope of your work role and responsibilities**

1. Describe three of your major obligations when working with older people or people with disabilities and how you apply them to your work.

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2. Describe three legal responsibilities you have to comply with in your work.

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3. Draw up a checklist of your role and responsibilities in your organisation as you understand them to be and/or as specified in your job description.

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4. Make a list of the areas of work that you encounter regularly; but which are outside the scope of your work. In these cases, your responsibility is to refer or report to someone else.

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5. Discuss with your supervisor to what degree you are responsible for your own actions and collect examples. Clarify with them exactly what this means in terms of the scope of your work practice.

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**Obtain a copy of your position/job description.**

6. List the policies, procedures, protocols, legislation and common law that affect your work role and responsibilities and provide examples of how you apply these in your work role, particularly within a legal and ethical framework.

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### Assessment task 3:

## Recognising potential or actual breaches and report according to organisation procedures

### (Case study analysis)

#### Scenario

You over hear a colleague talking to a residents family member discussing another resident who resides in the next room. Comments include 'she is so aggressive and obnoxious; I hate looking after her but really love your mum'.

1. What would you do?

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2. Is this a breach of privacy, or confidentiality?

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**Scenario**

One of the clients in your care asks you to go to the bank for her and withdraw \$200 from her account. She wants to give you her ATM access card and PIN so you don't have to queue up in the bank. She tells you: 'Keep \$10 and treat yourself to a little something'.

3. How would you deal with this without offending the client but staying within the bounds of the organisation's philosophy and the need to work ethically?

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4. How can you recognize the signs which are consistent with financial, physical, emotional, sexual abuse and neglect of the client and how do you report to an appropriate person as required?

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#### Assessment task 4:

### Meeting ethical responsibilities according to workplace policies and protocols, and scope of role

#### (Scenario analysis/written responses)

The following task explores the importance of working within organisational policy and procedures.

##### Scenario 1:

Julie is a disability worker in a respite care facility for young people with a disability. She has recently started her job. Julie has been busy since starting the job and hasn't had a chance to learn about the organisation's policy and procedures. One day, she is the only staff member on duty at the house when there is a very unpleasant altercation between two of the residents. Both of the young people involved have a significant intellectual disability and difficulty in communicating their feelings. Julie makes a mental note to mention it to her supervisor when she is next in.

Julie comes in the next day to find that the staff members on the next shift were not aware of the incident and organised for the two clients involved to move into the same room. Apparently one of the clients became very distressed and ran away; leave the night staff very perplexed.

1. In what way could Julie's knowledge and following of policy and procedure have prevented this unfortunate incident?

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2. What are some ways that Julie could have found out what the relevant policy and procedure is in relation to this situation?

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**Scenario 2:**

You are working in a Drug and Alcohol community education service where you have been employed for a few weeks. One of the workers, (who has been working in the service for a number of years) asks you to attend an interagency and promote a new education programme coming up. You haven't been involved in developing the programme and have never attended the interagency meetings. You feel anxious and confused about whether this task is your responsibility and how to go about it.

3. What could you do to determine what action to take? How could the organisation's policies and procedures assist you to decide what to do?

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### Assessment task 5:

## Recognising potential ethical issues and dilemmas, and discuss with an appropriate person

### (Scenario analysis and written responses)

#### Case study:

A local community club wants to take a group of clients from Boronia Village out for a picnic. They have asked John, one of the new care workers, to give them a list of people that they can contact and invite on this excursion.

After the last picnic, family members had complained about the way the clients were treated – they were in the sun for most of the day and there wasn't enough to eat and drink. Boronia Village relies on the financial support of the club despite having some concerns about the way their clients are treated by club members.

John thinks the picnic is a great idea, especially if some of the more difficult clients can go as it will give him and the other workers a bit of a break for the day. John gives the list of client names to the community club with details of special needs for all clients. John does not inform the clients about the excursion because he knows that many of the clients will not want to go. They did not enjoy the last trip with members of the community club.

Aspasia, one of the clients, finds out and tells John that she does not want to attend. John informs Aspasia that she has to go and that the fresh air will 'do her good'. You also agree that a trip out would be beneficial for Aspasia. There is also pressure from Aspasia's son who believes that the facility has not been providing enough recreational activities for his mother and the other residents.

1. What ethical dilemmas arise for you from the case study?

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**Scenario:**

The mother of a person you support has just offered you an expensive gift to thank you for something.

2. What are the ethical issues/ ethical dilemmas around accepting this gift?

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3. What are your own values on this matter?

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4. What are the values espoused by the organisation you work for?

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5. Does your organisation have a policy on the acceptance of gifts? What does this policy state?

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6. How would you respond to the parent in this instance? (Dot points)

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7. Would your response vary from this occasion to another occasion? If so, outline your reasons why.

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**Briefly describe what you would do in these situations and why.**

**Issue 1:**

Tommy and Mary have a moderate intellectual impairment. Tommy and Mary have an active consensual sexual relationship. Tommy's family have made it clear that they do not think it is right for them to have a sexual relationship, but Mary's family believe Mary has a right as an adult to make this decision. Do you tell Tommy's family or hope they will not find out and actively hide the truth from them by telling Tommy and Mary to keep their relationship a secret?

8. What you would do and why?

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**Issue 2:**

Brian is a type 2 diabetic and has a moderate intellectual impairment. You know that Brian's younger brother buys him food and drink, 'treats' that are not good for him. You also know that Brian's parents do not know that his younger brother does this. The two brothers have a great relationship that could be under stress if the younger brother stops buying Brian the treats. While Brian is showing no signs of an ill effect from 'treats' you know that Brian's parents are strictly managing Brian's food and drink intake. What you do? Risk the breakdown of the two brothers' relationship even though there does not appear to be any real harm to Brian's health?

9. What you would do and why?

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### **Assessment task 6:**

## **Recognising your own personal values and attitudes and take into account to ensure non-judgemental practice**

### **(Questions and written responses)**

1. What are some of your own personal values and attitudes and how can these influence an impartial and non-judgmental practice?

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2. How do you ensure services are available to all clients regardless of personal values, beliefs, attitudes and culture?

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## Assessment task 7:

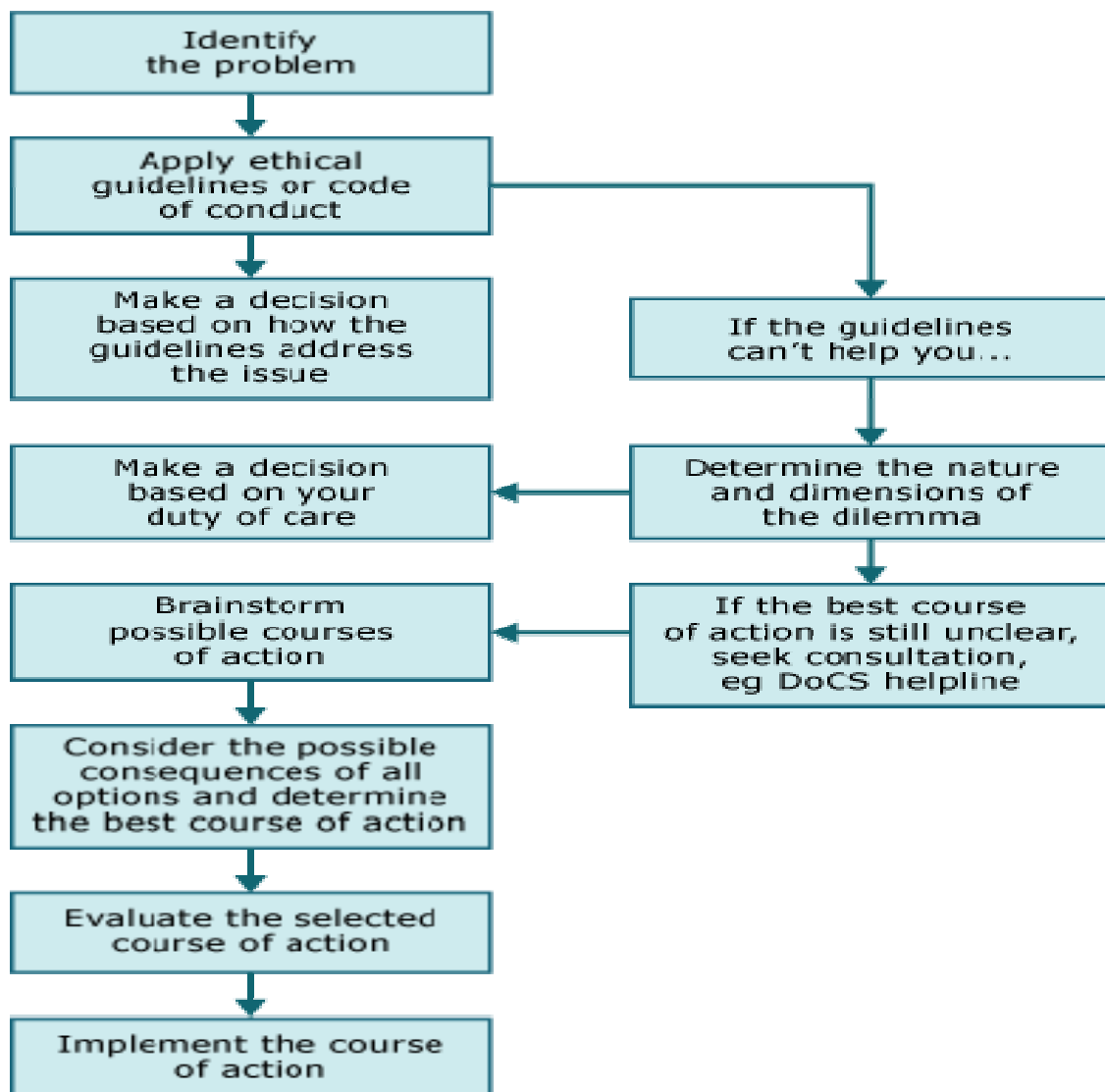
### Using effective problem solving techniques when exposed to competing value systems

#### (Case study analysis)

##### Case study

Harry McDonald is 82 years old and cares for his wife Amy who is an 83 year old community care client. She has later stage Alzheimer's and uses a pickup frame for mobilising. Amy has urinary incontinence. Harry is her primary carer. Harry is becoming increasingly stressed in his role as carer and has been leaving Amy in her room while he goes to the pub. There has also been evidence of injuries on Amy's wrists which seems to have resulted from her being tied to the bed. Amy wants to remain at her house.

Use the ethical decision making model to explore this situation. There are eight steps in the model and you need to list what you would do at each step in relation to this case study.







### **Assessment task 8:**

#### **Recognising unethical conduct and report to an appropriate person (Questions and written responses)**

What formal processes does your organisation have in place for reporting unethical practices? If there are no formal processes, develop these in consultation with your supervisor, colleagues or suitable others in the organisation. Seek approval of these and arrange to disseminate them with the code of practice.

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## Assessment task 9:

### Recognising potential and actual conflicts of interest (Scenario analysis)

#### Scenario 1

You have been looking after Mary in an aged care facility for the last few weeks, and she has offered you a gift of a box chocolate.

1. How would you respond?

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2. Would this be a conflict of interest?

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#### Scenario 2

At the end of a shift you observe a colleague helping themselves to some medical supplies. They advise you that “it’s ok” “I need it for the sports team I coach” when you ask them about it being ok to take they inform you “Oh it’s alright I can take it”

3. How would you respond?

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4. Would this be a conflict of interest?

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**(Essay)**

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## Assessment task 11:

### Pro-actively sharing feedback with colleagues and supervisors (Questions and written responses)

1. How often do you undertake self-evaluation in conjunction with supervisors and/or peers?

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2. Explain how you provide and receive open and evaluative feedback to and from co-workers-if so how often?

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3. How do you actively seek constructive feedback relevant to your work role and accept it non-defensively?

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4. What are your personal work goals in accordance with organisational requirements?

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## Assessment task 12:

### Identifying and taking opportunities to contribute to the review and development of policies and protocols

#### (Workplace project/report)

1. What are your organisation's strategies for reviewing and developing policies, procedures and protocols and what is your role in relation to this?

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2. You have been asked to contribute to the development of a protocol for communicating with clients who have limited English skills. Conduct research and outline **(3)** three sources of information you would use to contribute ideas and information to the development of this protocol.

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### **Assessment task 13:**

#### **Performance evidence/ Knowledge evidence:**

##### **Duty of care**

1. Give (3) three examples of what you do to ensure you comply with your duty-of-care obligations.

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2. Describe how you take responsibility for your actions. Give examples from your workplace, experience or ask an experienced coordinator.

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##### **Dignity of risk**

3. Provide an example of a situation where you have had to balance your duty of care with the dignity of risk. What questions did you ask your client to help them make an informed decision?

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## Privacy, confidentiality and disclosure

4. Explain why it is crucial that confidentiality is maintained in all your dealings with clients. Provide examples of this.

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## Informed consent

### Scenario

The person responsible for a person with a disability that you support requests to view their incident reports. Several of these incident reports involved another person with a disability, and therefore include their details. In answering the questions below refer to any relevant workplace policies or procedures that your organisation has.

5. What issues would you need to consider before responding to the person responsible?

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6. How would you respond to the request and outline any actions you might take?

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7. Explain in your own words how the National Privacy Principles influence how you do your job? Include the relevant policies within your organisation relating to privacy and confidentiality of records and their keeping in your state.

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### **Universal declaration of human rights**

8. Research the United Nations Convention on the Rights of Persons with Disabilities. How does this influence your role as a support worker?

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### **Discrimination**

9. What would you do if one of your clients was being discriminated against?

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## **WHS legislation**

10. Provide details of the WHS legislation and regulator for your State/Territory.

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11. Who can you contact in your organisation regarding workplace health and safety issues?

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## **Mandatory reporting and abuse**

Think about a situation where a client (real if possible) with challenging behaviours is constantly demanding attention. In this situation staff can become frustrated and withhold care and attention. (For example, the person is left in a chair all day or does not have their incontinence pad changed for fear of further behavioural incidents).

12. Describe the situation:

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13. How would you respond in this situation?

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14. Would you call it abuse? Why? Why not?

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15. What are the strategies that your organisation uses to prevent abuse?

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16. What do you do as a part of your role to prevent, detect and report abuse?

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17. What legislation protects the rights of children in your State or Territory?

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18. Describe in your own words what is involved in the Mandatory reporting process.

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### **Practitioner/client boundaries**

**Read the following case study and answer the question that follows.**

#### **Case study**

Ken is a youth worker in a rural area. He meets Michelle at the local drop-in centre where she has come for assistance with a domestic violence situation. Ken has also seen Michelle at the local pub a few times. Ken becomes aware that Michelle is attracted to him; her suggestive comments make it clear that she wants more from the relationship.

19. Select Ken's best response:

<input type="checkbox"/>	Buy her a drink and see where the conversation leads. Ken can always tell her at the end of the evening that there's no way he's going to get involved in a relationship with her.
<input type="checkbox"/>	Tell her that she is being ridiculous trying to chat up her youth worker and that she should find someone from her own social circle.
<input type="checkbox"/>	Gently but firmly state the limits of his role and make it clear that he is a youth worker and that is the basis of their relationship.
<input type="checkbox"/>	Finish up his drink quickly and head to the other pub up the road.

## Records management

20. What is the process for storing client information in your workplace?

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21. What do you do to ensure that client records are kept up to date?

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## Rights and responsibilities of workers, employers and clients

22. Consider the following situation:

### Scenario

Melanie is 19-years-old, has schizophrenia and an intellectual disability. Your client's mother has asked you to support her in her decision to discourage her daughter to stop a newly formed relationship with another client.

a) What will be your response to the mother's request?

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b) What are the client's rights in this situation?

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c) What are the mother's rights?

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d) What are the organisation's responsibilities to the client?

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e) What are the organisation's responsibilities to the mother?

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### **Following identified policy and protocols when managing a complaint**

List the ways in which your organisation:

23. Supports people with a disability/elderly and their advocates to be aware of their right to make a complaint.

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24. How is this communicated (e.g. brochures)?

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25. Fosters an atmosphere where people with a disability and their advocates are empowered to express their concerns and make a complaint. How is this achieved?

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26. Does your organisation have a grievance/ complaints register?

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27. List 3 benefits of senior managers being aware of and reviewing complaints registers on a regular basis.

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### **Guardianship**

28. What is the name of the legal body in your state/territory to which applications are made for Guardianship?

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29. Have you supported a person who needed a Guardian? What were the circumstances that required a Guardian?

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30. What is special about the consent required for emergency medical treatment?

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31. Describe a situation where you thought that there should be a Guardian appointed but others disagreed. Explain what happened. (Max 250 words)

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### **Continuing education**

32. What are the benefits to you, your organisation and to your clients of continually upgrading your skills and knowledge?

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33. Please explain why monitoring and reviewing your performance is so important, and why you should increase your skills?

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## TRAINING RECORD SUMMARY SHEET

### CHCLEG001 Work legally and ethically

The Training Record of : \_\_\_\_\_

Trainer \_\_\_\_\_

RTO \_\_\_\_\_

ELEMENTS OF COMPETENCY	ASSESSOR SIGNATURE	DATE	SUPERVISOR SIGNATURE	C/NYC	COMMENTS
Element 1: Identify and respond to legal requirements					
Element 2: Identify and meet ethical responsibilities					
Element 3: Contribute to workplace improvements					

#### Evidence Gathered

(Please tick each one)

- ☐ Activities from Learning Resource:
- ☐ Written Assessment Tasks (at end of resource)
- ☐ On-the-job-assessment
- ☐ 3<sup>rd</sup> party report(s)
- ☐ **C**
- ☐ **NYC**

## CHCLEG001 Work legally and ethically

### Questions to support Skills Assessment

<b>Applicant:</b>	
<b>Name of RTO:</b>	
<b>Assessor:</b>	
<b>Workplace:</b>	
<b>Date of assessment:</b>	

		Satisfactory response	
		Yes	No
<b>Q1.</b>	Explain what key parts make up the Australian Legal framework.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Q2.</b>	Discuss how you have demonstrated duty of care responsibilities.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Q3.</b>	Can you identify a relevant piece of legislation and explain how it impacts on your day-to-day work with people with a disability?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Q4.</b>	What advice could you offer a client regarding lodging a complaint against an organisations' services?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Q5.</b>	Explain in your own words what your understanding is of Common law.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Q6.</b>	Describe a time at work where you have grappled with an ethical dilemma.	<input type="checkbox"/>	<input type="checkbox"/>

The applicant's underpinning knowledge was:	<b>Not satisfactory</b>	<input type="checkbox"/>	<b>Satisfactory</b>	<input type="checkbox"/>
<b>Feedback to applicant:</b>				
<b>Applicant signature:</b>				
<b>Assessor signature:</b>				
<b>Comments:</b>				

# CHCLEG001 Work legally and ethically

## Assessment plan/Mapping document

### Assessor Evidence Matrix

This Assessment plan is to be completed with the assessor.

Your assessor will discuss the following areas with you. They should be ticked off once you are confident that you have understood the information and procedures regarding this assessment.

- ☐ Purpose and outcomes of the assessment process
- ☐ Relevant units of competency
- ☐ Appeals process
- ☐ Confidentiality and security of information
- ☐ Special needs/Additional information

<b>Candidate's Name</b>		<b>PHONE NO.</b>	
<b>Assessor's Name</b>		<b>PHONE NO.</b>	
<b>Employer Contact Details</b>		<b>PHONE NO.</b>	
<b>Location of Assessment</b>			
<b>Assessment Date</b>		<b>Time</b>	
<b>Industry Specialist If Required.</b>			

## Performance and Knowledge evidence

### Performance evidence:

The candidate must show evidence of the ability to complete tasks outlined in elements and performance criteria of this unit, manage tasks and manage contingencies in the context of the job role. There must be evidence that the candidate has:

- Completed workplace activities in accordance with legal and ethical requirements in at least 3 different situations
- Developed appropriate responses to at least 3 different legal or ethical issues relevant to the work role
- Identified and communicated at least 2 potential work practice improvements designed to enhance workplace responsiveness to legal and ethical requirements

### Knowledge evidence:

The candidate must be able to demonstrate essential knowledge required to effectively do the task outlined in elements and performance criteria of this unit, manage the task and manage contingencies in the context of the work role. This includes knowledge of:

Legal and ethical considerations (international, national, state/territory, local) for people working in the community services and health context, how they are applied in organisations, how these impact individual workers, and the consequences of breaches:

- children in the workplace
- codes of conduct
- codes of practice
- complaints management
- continuing professional education
- discrimination
- dignity of risk
- duty of care
- human rights
  - Universal declaration of human rights
  - relationship between human needs and human rights
  - frameworks, approaches and instruments used in the workplace
- informed consent
- mandatory reporting
- practice standards
- practitioner/client boundaries
- privacy, confidentiality and disclosure
- policy frameworks
- records management
- rights and responsibilities of workers, employers and clients
- specific legislation in the area of work
- objectives and key components
- work role boundaries
- responsibilities and limitations
- work health and safety

Interrelationships, similarities and differences that may exist between legal and ethical frameworks

Legal issues in the context of the work role:

- type of legal issues that arise
- ways to respond

Ethical practice in the context of the work role:

- type of ethical issues that arise
- ways to respond

Workplace policies, procedures and protocols:

- how they are/should be developed
- processes for review, including consultation and mechanisms for input

<b>ASSESSMENT TOOLS:</b>	Brief Description of Tasks required during the gathering or evidence or during assessment.
Methods of Assessment (Delete methods not required)	To demonstrate competence in this unit you are required to complete the following assessment tasks: (Remove any tasks (ie if assessment is conducted as a whole of workplace duties observation) or add more tasks if required)

Elements of Competency	Activities	Assessment Tasks	Portfolio	Work Project	Practical Demo / Role Play	Questions & Answers/ Written Assessment	Case Study Analysis	Scenario Analysis / Reports
<b>Element 1: Identify and respond to legal requirements</b>								
1.1 Identify, access and interpret sources of information about the legal requirements that apply to the work role	1	1				Assessment Task 1		
1.2 Identify the scope and nature of own legal responsibilities	2	2				Assessment Task 2		
1.3 Adhere to legal requirements in work practice according to workplace policies and procedures and scope of role	2	2				Assessment Task 2		
1.4 Recognise potential or actual breaches and report according to organisation procedures	3	3					Assessment Task 3	
<b>Element 2: Identify and meet ethical responsibilities</b>								
2.1 Identify, access and interpret sources of information about the ethical responsibilities that apply to the work role	9,10	4				Assessment Task 4		Assessment Task 4
2.2 Identify the scope and nature of own ethical responsibilities	4,9,10	4				Assessment Task 4		Assessment Task 4
2.3 Meet ethical responsibilities according to workplace policies and protocols, and scope of role	5,9,10	4				Assessment Task 4		Assessment Task 4
2.4 Recognise potential ethical issues and dilemmas, and discuss with an appropriate person	6,9,10	5				Assessment Task 5		Assessment Task 5
2.5 Recognise own personal values and	7,9,10	6				Assessment Task 6		

Elements of Competency	Activities	Assessment Tasks	Portfolio	Work Project	Practical Demo / Role Play	Questions & Answers/ Written Assessment	Case Study Analysis	Scenario Analysis / Reports
attitudes and take into account to ensure non-judgemental practice								
2.6 Use effective problem solving techniques when exposed to competing value systems	8,9,10	7					Assessment Task 7	
2.7 Recognise unethical conduct and report to an appropriate person	9,10,11	8				Assessment Task 8		
2.8 Recognise potential and actual conflicts of interest	9,10,12	9						Assessment Task 9
<b>Element 3: Contribute to workplace improvements</b>								
3.1 Identify situations where work practices could be improved to meet legal and ethical responsibilities	13	10						Assessment Task 10
3.2 Pro-actively share feedback with colleagues and supervisors	14	11				Assessment Task 11		
3.3 Identify and take opportunities to contribute to the review and development of policies and protocols	15	12		Assessment Task 12				Assessment Task 12



<b>Assessment Conditions</b>	
<p>Skills must have been demonstrated in the workplace or in a simulated environment that reflects workplace conditions. The following conditions must be met for this unit:</p> <ul style="list-style-type: none"> <li>• use of suitable facilities, equipment and resources, including: <ul style="list-style-type: none"> <li>- current legislation, regulations and codes of practice</li> <li>- organisation policies, procedures and protocols</li> </ul> </li> <li>• modelling of industry operating conditions, including presence of problem solving activities</li> </ul> <p>Assessors must satisfy the Standards for Registered Training Organisations (RTOs) 2015/AQTF mandatory competency requirements for assessors.</p>	
<b>Foundation Skills</b>	
<p>The Foundation Skills describe those required skills (such as language, literacy, numeracy and employment skills) that are essential to performance.</p>	
<b>Date of assessment:</b>	
<p><b>Assessment will take place at a mutually agreed time between the candidate and the assessor.</b></p> <p><b>DATE:</b> _____ <b>(Insert agreed date)</b></p>	
<b>Assessor/s signature:</b>	<b>Date:</b>
<p>In signing this form the candidate acknowledges that the assessment plan has been fully explained and s/he understands and agrees to the assessment process as described above.</p>	
<b>Candidate's signature:</b>	<b>Date:</b>
<b>Comments</b>	

## CHCLEG001 Work legally and ethically

### 3rd party report

<b>Candidate's name</b>			
<b>Third party evidence provided by</b>			
<b>Relationship to candidate</b>			
<b>Evidence collected</b>	Interview at the workplace	<input type="checkbox"/>	
	Interview on the telephone	<input type="checkbox"/>	
<b>Interview conducted by</b>			
<b>Instructions</b> <p>As part of the assessment for the unit of competency listed above, evidence is sought to support a judgement about the candidate's competence. A letter of support from the organisation validating a range of tasks that the candidate has successfully completed would be useful in identifying competency.</p>			
<b>Does the candidate consistently:</b>	<b>Yes</b>	<b>No</b>	
Identifies, access and interpret sources of information about the legal requirements that apply to the work role	<input type="checkbox"/>	<input type="checkbox"/>	
Identifies the scope and nature of own legal responsibilities	<input type="checkbox"/>	<input type="checkbox"/>	
Adheres to legal requirements in work practice according to workplace policies and procedures and scope of role	<input type="checkbox"/>	<input type="checkbox"/>	
Recognises potential or actual breaches and report according to organisation procedures	<input type="checkbox"/>	<input type="checkbox"/>	
Identifies, access and interpret sources of information about the ethical responsibilities that apply to the work role	<input type="checkbox"/>	<input type="checkbox"/>	
Identify the scope and nature of own ethical responsibilities	<input type="checkbox"/>	<input type="checkbox"/>	
Meets ethical responsibilities according to workplace policies and protocols, and scope of role	<input type="checkbox"/>	<input type="checkbox"/>	
Recognises potential ethical issues and dilemmas, and discuss with an appropriate person	<input type="checkbox"/>	<input type="checkbox"/>	
Recognises own personal values and attitudes and take into account to ensure non-judgemental practice	<input type="checkbox"/>	<input type="checkbox"/>	
Uses effective problem solving techniques when exposed to competing value systems	<input type="checkbox"/>	<input type="checkbox"/>	
Recognises unethical conduct and report to an appropriate person	<input type="checkbox"/>	<input type="checkbox"/>	
Recognises potential and actual conflicts of interest	<input type="checkbox"/>	<input type="checkbox"/>	
Identifies situations where work practices could be improved to meet legal and ethical responsibilities	<input type="checkbox"/>	<input type="checkbox"/>	
Pro-actively shares feedback with colleagues and supervisors	<input type="checkbox"/>	<input type="checkbox"/>	
Identifies and take opportunities to contribute to the review and development of policies and protocols	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Comments</b>			
<b>Supervisor's signature</b>		<b>Date</b>	
<b>Assessor's signature</b>		<b>Date</b>	

	<b>Observation Workplace Assessment Form</b> <b>Community services training package</b>			
<b>Name of candidate</b>				
<b>Unit</b>	<b>CHCLEG001 Work legally and ethically</b>			
<b>Workgroup</b>				
<b>Name of Assessor</b>				
<b>Assessment strategy</b> <ul style="list-style-type: none"> <li>• A demonstration of the competency in an on-the-job situation or a simulation</li> <li>• Oral questioning</li> <li>• Any relevant workplace documents that support the assessment</li> </ul> <p>Conditions under which the assessment should take place:</p> <p>-----</p> <p>-----</p> <p>-----</p>				
	<b>Questions</b>	<b>Observation 1</b>	<b>Observation 2</b>	
<b>Element 1: Identify and respond to legal requirements</b>				
1.1 Identify, access and interpret sources of information about the legal requirements that apply to the work role	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
1.2 Identify the scope and nature of own legal responsibilities	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
1.3 Adhere to legal requirements in work practice according to workplace policies and procedures and scope of role	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
1.4 Recognise potential or actual breaches and report according to organisation procedures	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Element 2: Identify and meet ethical responsibilities</b>				
2.1 Identify, access and interpret sources of information about the ethical responsibilities that apply to the work role	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.2 Identify the scope and nature of own ethical responsibilities	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.3 Meet ethical responsibilities according to workplace policies and protocols, and scope of role	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.4 Recognise potential ethical issues and dilemmas, and discuss with an appropriate person	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.5 Recognise own personal values and attitudes and take into account to ensure non-judgemental practice	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.6 Use effective problem solving techniques when exposed to competing value systems	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.7 Recognise unethical conduct and report to an appropriate person	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.8 Recognise potential and actual conflicts of interest	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<b>Element 3: Contribute to workplace improvements</b>			
3.1 Identify situations where work practices could be improved to meet legal and ethical responsibilities	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.2 Pro-actively share feedback with colleagues and supervisors	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.3 Identify and take opportunities to contribute to the review and development of policies and protocols	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Signed by the assessor:</b>  <div style="display: flex; justify-content: space-between;"> <div>-----</div> <div><b>Dated:</b></div> </div>			
<b>Signed by the candidate:</b>  <div style="display: flex; justify-content: space-between;"> <div>-----</div> <div><b>Dated:</b></div> </div>			
<b>Comments</b>			

## Competency review tool: Performance evidence

Required knowledge	Assessed in this workbook by:	Assessment methods
Completed workplace activities in accordance with legal and ethical requirements in at least 3 different situations	Assessment 2, 5, 10, 13	Questions and written responses) Case study analysis Scenario analysis Essay Project Practical demonstration Role-plays Learning activities Skills questions 3 <sup>rd</sup> party report
Developed appropriate responses to at least 3 different legal or ethical issues relevant to the work role	Assessment 4, 5, 7, 8, 10	Questions and written responses) Case study analysis Scenario analysis Essay Project Practical demonstration Role-plays Learning activities Skills questions 3 <sup>rd</sup> party report
Identified and communicated at least 2 potential work practice improvements designed to enhance workplace responsiveness to legal and ethical requirements	Assessment 10, 11, 12, 13	Questions and written responses) Case study analysis Scenario analysis Essay Project Practical demonstration Role-plays Learning activities Skills questions 3 <sup>rd</sup> party report

## Competency review tool: Knowledge evidence

Required knowledge	Assessed in this workbook by:	Assessment methods
<p>Legal and ethical considerations (international, national, state/territory, local) for people working in the community services and health context, how they are applied in organisations, how these impact individual workers, and the consequences of breaches:</p> <p>Children in the workplace</p> <p>Codes of conduct</p> <p>Codes of practice</p> <p>Complaints management</p> <p>Continuing professional education</p> <p>Discrimination</p> <p>Dignity of risk</p> <p>Duty of care</p> <p>Human rights</p> <ul style="list-style-type: none"> <li>• Universal declaration of human rights</li> <li>• Relationship between human needs and human rights</li> <li>• Frameworks, approaches and instruments used in the workplace</li> </ul> <p>Informed consent</p> <p>Mandatory reporting</p> <p>Practice standards</p> <p>Practitioner/client boundaries</p> <p>Privacy, confidentiality and disclosure</p> <p>Policy frameworks</p> <p>Records management</p> <p>Rights and responsibilities of workers, employers and clients</p> <p>Specific legislation in the area of work</p> <p>Objectives and key components</p> <p>Work role boundaries</p> <p>Responsibilities and limitations</p> <p>Work health and safety</p>	<p>Assessment 1, 2, 3, 4, 5,6, 7, 8, 9, 10, 11, 12,13</p>	<p>Questions and written responses)</p> <p>Case study analysis</p> <p>Scenario analysis</p> <p>Essay</p> <p>Project</p> <p>Practical demonstration</p> <p>Role-plays</p> <p>Learning activities</p> <p>Skills questions</p> <p>3<sup>rd</sup> party report</p>
<p>Interrelationships, similarities and differences that may exist between legal and ethical frameworks</p>	<p>Assessment 1, 2</p>	<p>Questions and written responses)</p> <p>Case study analysis</p> <p>Scenario analysis</p> <p>Essay</p> <p>Project</p> <p>Practical demonstration</p> <p>Role-plays</p> <p>Learning activities</p> <p>Skills questions</p> <p>3<sup>rd</sup> party report</p>
<p>Legal issues in the context of the work role:</p> <ul style="list-style-type: none"> <li>• type of legal issues that arise</li> <li>• ways to respond</li> </ul>	<p>Assessment 1,3, 7</p>	<p>Questions and written responses)</p> <p>Case study analysis</p> <p>Scenario analysis</p> <p>Essay</p> <p>Project</p> <p>Practical demonstration</p> <p>Role-plays</p> <p>Learning activities</p>

		Skills questions 3 <sup>rd</sup> party report
Ethical practice in the context of the work role: <ul style="list-style-type: none"> <li>• type of ethical issues that arise</li> <li>• ways to respond</li> </ul>	Assessment 3,4, 5,6,7, 9	Questions and written responses) Case study analysis Scenario analysis Essay Project Practical demonstration Role-plays Learning activities Skills questions 3 <sup>rd</sup> party report
Workplace policies, procedures and protocols: <ul style="list-style-type: none"> <li>• how they are/should be developed</li> <li>• processes for review, including consultation and mechanisms for input</li> </ul>	Assessment 10, 12	Questions and written responses) Case study analysis Scenario analysis Essay Project Practical demonstration Role-plays Learning activities Skills questions 3 <sup>rd</sup> party report