

Policy: Duty of Care

Clinical Governance Domain: Consumer Participation

Author/Reviewer: Case Practice Working Group

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SCOPE

This policy applies to all staff, volunteers and students working at Brophy Family and Youth Services (BFYS). It applies to all client contact in BFYS buildings, home visits or outreach services.

PRINCIPLES

BFYS recognises the importance of providing a safe environment for both employees and clients and is committed to being a Child Safe organisation. The safety of children and risk of harm must always be our primary consideration. BFYS practice encompasses a supportive approach and is aligned with the core values of the social work profession.

Every person has a duty of care to any other person who is likely to be affected by the first person's actions or failure to act. It is in the interest of clients, as well as consistent with legal obligations, that BFYS behaves responsibly in the delivery of its services to avoid injury and harm to our clients.

Duty of care must be balanced with dignity of risk, that is, the right of informed individuals to take calculated risks. Everyone has a right to an assumption of competence. Informed decision making involves a general awareness of the consequences of the decision and the decision is made voluntarily and without coercion. Clients will be encouraged to make their own decisions regarding their care at all times.

BFYS recognises the unique position it holds in the lives of children, young people and families in working for positive change whilst being conscious of the safety and welfare of children in the families we work with. The agency has a commitment to zero tolerance of child abuse and will always work with children's safety and best interests at the foremost.

BFYS promotes openness, transparency and family self-determination wherever possible in the process of making reports to Child Protection Services and Child FIRST.

The agency believes that family violence is a public issue not a private matter and any response to family violence must take a gendered and rights based approach. The agency reinforces the following principles in relation to family violence:

- Everyone has the right to feel safe within their family.
- The safety of women and children who experience family violence is paramount in any response.
- Men who use violence must be held accountable and challenged to take responsibility for their actions.
- Violence towards children, including exposure to family violence is a form of child abuse and children have a right to be safe from this.
- Preventing family violence is the responsibility of the whole community and requires attitude and behaviour change.

POLICY

The organisation is committed to working with families and individuals to provide a culturally safe environment for all, free of physical, sexual and emotional abuse including neglect.

Duty of care requires that an acceptable standard of care that is ‘reasonably practicable’ be provided by BFYS to all people involved with the organisation. Based on the law of negligence, if a person does not act reasonably in their provision of care and a person is injured, then they may be held legally accountable.

Workers in all human service areas need to have a highly developed self-awareness for violent and potentially violent situations. Worker and client safety will be paramount in any situation when a service user presents to the service substance affected. BFYS recognises that being substance affected impacts on people’s capacity to participate in any intervention or therapy and clinical decision making needs to reflect this understanding.

BFYS will provide the opportunity for ongoing training and development to all staff and volunteers in relation to duty of care responsibilities.

All complaints in relation to Duty of Care shall be dealt with promptly in accordance with the agency complaints framework or disciplinary procedures as applicable.

DEFINITION OF TERMS

What is reasonable care?

Reasonable care is determined under common law to be the standard of care that a reasonable worker would provide in that situation. Duty of care is breached by failing to do what is reasonable or by doing something unreasonable that results in harm, loss or injury to another. This can be physical harm, sexual harm, economic loss or psychological trauma.

Staff face many situations in their day-to-day work with clients and their relationships with their colleagues where they apply the ‘reasonable worker’ test. Examples include:

- deciding whether to accept a gift from a grateful client

- deciding how to respond to a request for out-of-work hours contact with a client
- deciding whether to notify about a crime a client has disclosed
- deciding what to do about a client's dishonesty in not declaring their employment income to Centrelink
- deciding what to do about a co-worker's inappropriate use of agency resources
- deciding what to do about a co-worker's inappropriate humor that could be considered sexual harassment.

The agency's Code of Conduct acts as a general guide to assist staff in responding to difficult situations that could not reasonably be expected to be addressed via a specific policy. These policies assist Brophy staff to determine what would be considered 'reasonable' under the Duty of Care expectations.

Reasonable care is often balanced against other, sometimes competing, responsibilities, such as:

- the safety of other people (other clients, workers, self etc)
- privacy and confidentiality
- the needs of clients (eg. recreation, socialisation, opportunities to develop skills, self-responsibility and decision-making).

Each situation is different and must be assessed on its own merits. Duty of care is likely to be greatest to those who are relying on the worker the most.

What is Child Abuse?

Children have a right to live in a safe, secure and nurturing environment. Early identification and effective intervention is central to reducing the initial effects and long term consequences of child abuse. In working with families, the safety and best interest of children and young people is of paramount concern.

Child Abuse is harm perpetrated on a child or young person, which endangers the child's physical or emotional health or development. Child Abuse is usually grouped in four categories - physical abuse, sexual abuse, emotional abuse and neglect

- Physical Abuse occurs when a child suffers or is likely to suffer significant harm from an injury inflicted by a child's parent or caregiver. The injury may be inflicted intentionally or may be the inadvertent consequence of physical punishment or physically aggressive treatment of a child. The injury may take the form of bruises, cuts, burns or fractures.
- Sexual Abuse occurs when a person uses power or authority over a child to involve or groom the child for sexual activity and the child's parent or caregiver has not protected the child. Physical force is sometimes involved. Child sexual abuse involves a wide range of sexual activity including exposure of the child to pornography.
- Emotional and Psychological Abuse occurs when a child's parent or caregiver repeatedly rejects the child or uses threats to frighten the child. This may involve name calling, put downs or continual coldness from the parent or caregiver, to the extent that it significantly damages the child's physical, social, intellectual or emotional development.
- Neglect is the failure to provide the child with the basic necessities of life such as food, clothing, shelter, medical attention or supervision, to the extent that the child's health and development is, or is likely to be, significantly harmed.
- Racial, Cultural or Religious Abuse is when contempt, ridicule, hatred or negativity is directed towards a child due to their race culture or religion. It may be overt, such as

direct racial vilification or discrimination, or covert, such as demonstrating a lack of cultural respect (attitude and values) and awareness (knowledge and understanding) or failing to provide positive images about another culture.

Mandatory Reporting

The Child Youth and Families Act 2005 require mandatory reporting of suspected child abuse by doctors, nurses, police and school teachers. The Child Youth and Families Act 2005 require the State, through Protective Services, to intervene when it receives a notification.

A notification to Protective Services is required when there is an act or omission by parents or care givers which endangers a child's physical or emotional health or development; by definition the injury or harm is not an accident but neither is it always the intention of the child's care giver to inflict injury or harm.

Following the Betrayal of Trust Royal Commission new criminal offences have been created in Victoria that imposes a clear legal duty upon **all adults** to report information about child sexual abuse to police. Any adult who forms a reasonable belief that a sexual offence has been committed or is at risk of being committed by an adult against a child under 16 has an obligation to report.

All incidents of actual or suspected child abuse regardless of the nature shall be reported through line management and documented through case notes and Riskman as soon as practical. Incidents of actual or suspected child sexual abuse must be reported immediately to Police and documented in case notes and Riskman.

Service users will be informed of the limitations to confidentiality on initial contact with workers. Usually parents/care givers will be informed of a decision to report to Child Protection; however it is not appropriate to inform parents or caregivers when this places:

- the child/ren at risk of abuse or harm (NB: If informing the parents or caregivers may impair the processes of investigation, this may place the child at risk of further abuse.)
- the agency staff, volunteers or students are at risk

Family Violence

BFYS recognises that everyone has the right to feel safe within their family. Providing a integrated responses to women and children experiencing family violence is a priority due to the overwhelmingly gendered nature of this human rights violation. Family violence harms one in five women, is associated with just over half of child protection cases and occurs disproportionately in our indigenous communities.

Brophy recognises that family violence is never acceptable and that the social and economic cost on individuals, families and communities is one we cannot afford. Family violence can occur in a number of circumstances and in a range of 'family' settings. It can take the form of abuse of the elderly, sibling abuse, violence between same sex couples, adolescent children being violent towards parents, carers being violent towards people with a disability or female to male partner violence. In the overwhelming majority of cases, however, family violence and intimate partner violence are perpetrated by males against their female partners.

Family violence is the repeated use of violence, threatening, coercive or controlling behaviour by an individual against a family member(s) or against someone with whom they have, or have had, an intimate relationship (also referred to as intimate partner violence). Violent behaviour includes not only physical assaults but an array of power and control

tactics used together with one another including direct or indirect threats, sexual assault, emotional and psychological torment, control of money, property damage, social isolation and behaviour which causes a person to live in fear (Domestic Violence Victoria 2006).

Brophy acknowledges the definition of 'family' depends on the specific culture of the community to which the victim belongs. For example in Indigenous communities 'family' encompasses extended family, kinship networks and communities.

Brophy delivers a small component of specialist family violence services as part of the Integrated Family Violence Service System. This includes Counselling for Women and Children experiencing Family Violence and Men's Behaviour Change Program. Any worker suspecting family violence should liaise with their team leader for referral and reporting options.

Refusal of Service

BFYS has a principle of not refusing service to clients, except in exceptional circumstances. The exceptional circumstances primarily relate to significant worker safety issues such as violence or threats from a client.

Brophy Family and Youth Services recognises the importance of providing a safe environment for both employees/volunteers and service users thus duty of care, risk management and worker safety will be paramount in any situation where a service user is refused care.

RELATED INTERNAL DOCUMENTS

Rights Based Practice Policy and Procedure

[Emma House Referral Guidelines](#)

[DHS Client Incident Summary Guide](#)

[Critical Incident Policy](#) and [Procedure](#)

[Code of Conduct](#)

[CRAF](#)

EXTERNAL REFERENCES

[Victorian Child Safe Standards](#)

[Creating a Child Safe Organisation - Commission for Children and Young People](#)

[Failure to disclose factsheet](#)

[DHS Guidelines for investigating abuse in Care](#)

[Practice Guidelines: Women and children's family violence counseling and support programs 2008](#)

[Family Violence risk Assessment and risk Management practice Guide](#)

[Occupational Health and Safety Act 2004](#)

[Equal Opportunity Act 2010](#)

[Human Rights and Equal Opportunity Commission Act 1996](#)

[Family Violence Protection Act 2008](#)

[Victorian Charter of Human Rights and Responsibilities Act 2006](#)

[Child Wellbeing and safety Act 2005](#)

[Child, Youth and Families Act 2005](#)