

## QCIDD Protection of Legal and Human Rights and Freedom from Abuse and Neglect Protocol

### *Protocol Statement*

QCIDD does not tolerate abuse, assault, neglect or exploitation of service users or their supporters and advocates.

QCIDD upholds the principle that service users have the same human rights as others people to live free from fear of abuse, threats and assaults. These rights are enshrined in the Disability Services Act Queensland 2006. See attachment 1 for a summary of these rights and protections.

QCIDD supports service users to exercise their legal and human rights by making them aware of their rights as QCIDD service users and of the QCIDD Complaints Policy. See also QCIDD Rights and Responsibilities Policy and QCIDD Complaints Policy.

All incidents or allegations of abuse or neglect emerging in clinics and telephone or email consultations shall be recorded in the clinical, telephone and email consultation notes and reported to the QCIDD director. In situations other than clinics and phone or email consultations, a report shall be made to the Director.

QCIDD does not tolerate acts or attitudes of retribution towards those reporting suspected or observed abuse or neglect.

QCIDD provides advice for client treatment and intervention which are least restrictive for the person and advises that any restrictive practices recommended must be approved through the required authorisation procedures. This relates to Queensland Disability Service Standard 2 – *Individual needs and personal goals are met in the least restrictive way possible and within available resources;*

- are in accordance with the duty of care owed;
- do not breach the person's human and legal rights; and
- are not in breach of any other statutory requirements including the *Disability Services Act 2006* and the *Workplace Health and Safety Act 1995*.

Refer also to QCIDD's Values Statement.

## *Rationale*

All QCIDD staff have a duty of care toward clients which includes a commitment and an obligation to prevent abuse and to respond promptly to any reported allegation or observation of abuse or neglect directed towards clients by QCIDD personnel or others.

Any person who reports suspected or alleged incidents of abuse, neglect and exploitation of a service user has the right to have their safety and rights respected and safeguarded.

This protocol applies to all QCIDD staff, volunteers, students, academic visitors and to any person with a contractual arrangement with QCIDD to deliver services to people with a disability.

QCIDD is committed to using human resource management systems and practices that reduce the risk of abuse or neglect of service users and support effective recruitment and selection. This includes compliance with the Disability Services Regulation requiring criminal history checking, staff performance monitoring, development and management.

## *Definitions*

QCIDD defines *abuse* as any act of commission or omission that harms or impedes a person's physical and/or emotional health, wellbeing and development; and *neglect* as failure to provide the necessary care, aid or guidance to dependent adults or children by those responsible for their care. See attachment 2 for further detail on definitions.

## *When to use this protocol*

QCIDD staff or contractors will need to follow the procedures contained in this protocol if they:

- are responsible for the person at the time of an incident
- encounter the person after the event
- are told by the person, a witness or a third party about alleged or suspected abuse
- become aware of facts and circumstances that may indicate abuse.

QCIDD staff or contractors who become aware of an incident of abuse or reasonably suspects abuse must ensure that:

- the safety and best interests of the person subjected to abuse are paramount in any action taken
- the matter is reported immediately using the appropriate channels, as stipulated in this protocol.

Failure to report injuries, incidents or signs and indicators of abuse constitutes a breach of duty of care. If failure to report injuries, incidents or signs of abuse could be reasonably regarded as employee misconduct or negligence, it may constitute a breach of the employment contract and may result in dismissal.

### *Roles and Responsibilities:*

The following describes the roles and responsibilities of QCIDD's staff and contractors in preventing abuse and neglect of people with a disability.

QCIDD's Director is responsible to:

- ensure that all staff and contractors with service user contact are aware of, trained in, compliant with and implement this protocol and procedures
- actively promote an appropriate service culture in accordance with the protocol
- ensure staff are trained to recognise and prevent/minimize the occurrence or recurrence of abuse and neglect of service users within the QCIDD context
- consistently promote the rights of service users within their families, communities and cultures
- use the Continuous Improvement Plan to identify and remedy gaps which contributed to a client experiencing abuse and neglect by QCIDD staff/contractors
- ensure that relevant staff advise clients, their families and advocates about their right to pursue grievances and complaints and to access the criminal justice system without fear of retaliation or retribution
- ensure the implementation of the requirement to report the abuse, neglect or exploitation of clients to the relevant authority in line with the requirements of this protocol and the Disability Services Act.

All QCIDD staff are required to:

- undertake induction and/or training to ensure they know and use this protocol
- actively embrace an appropriate service culture in accordance with this protocol
- support management to create a culture of no retribution for reporting of suspected abuse or neglect
- report all alleged or suspected instances of abuse and neglect in accordance with this protocol
- inform guardians or substitute decision makers of all alleged or suspected instances of abuse and neglect, except when the guardian/substitute decision maker is the alleged perpetrator or where another service provider is already primarily responsible for the client
- cooperate with the investigation of any complaint relating to the provision of services
- provide appropriate support to the person making the report.

## *Procedures*

### ***What to do when any allegation or observation of abuse or neglect is made.***

1) The staff member to whom the allegation is made, or who observes signs of abuse or neglect, must document the observation/allegation in clinical or telephone/email consultation notes. In other situations, a report shall be made to the Director. .

2) This staff member reports the incident to the QCIDD Director or senior officer in the absence of the Director. If the Director is the alleged offender, then the report must be made to the Head of the Southern Clinical School of Medicine..

3) The staff member will immediately:

- check that the person alleged to be abused or neglected is safe (a staff member may enlist the help of a practitioner to do this)
- check the credibility of the allegation through a preliminary investigation.

- 4) If the report is validated, the Director or relevant staff member will then contact the Office of the Adult Guardian for advice on how best to report the allegation. (see attachment 3 for contact details) It may be that:

- the Office of the Adult Guardian will use its statutory powers to decide if the allegations are substantiated
- that an application to the Guardianship and Administrative Tribunal for an urgent order to protect the adult will be required
- that police will be required to investigate.

5) No further investigations, which may compromise or prejudice the involvement of the police or other external organisation or impede natural justice, are to be conducted by QCIDD.

QCIDD's Director or a delegate liaises with police or other external organisation regarding further information or other requirements.

### ***What to do if the alleged offender is a staff member***

- action procedures 1) to 5) above
- comply with the University of Queensland Policy 5.70.10 on Misconduct – Serious Misconduct.

### ***What to do if the alleged offender is a person outside of the organisation***

- action steps 1) to 5) above
- if QCIDD has enough information about the situation in which the abuse took place, then QCIDD will recommend that where possible, all

interactions between the service user and alleged offender will be avoided or will occur only where it is required and under appropriate supervision.

***What to do if the alleged offender is a QCIDD service user***

- action steps 1) to 5) above
- in this situation, QCIDD is unlikely to have any direct control over contact between the alleged perpetrator and person subject to abuse, however, QCIDD will make recommendations to prevent further contact between the two parties.

**Where the alleged offender is a QCIDD service user, QCIDD will ensure that:**

- if the service user and person subject to abuse are both in QCIDD's premises, that they are separated or that a staff member supervises any interactions between the person and alleged offender
- assistance is offered to both parties in their interactions with the police or other relevant organisation or authorities. This will usually entail a referral to relevant services
- both parties are provided with appropriate accessible information about their legal rights, options, and support services; or be given the opportunity to access this information. This may entail referral to relevant services.

***What to do if the offender is found to be criminally responsible or found guilty with no conviction recorded, after an investigation.***

If the offender is a QCIDD employee or contractor and is found to be criminally responsible or found guilty with no conviction recorded, QCIDD will be guided by the authorised officer to take appropriate disciplinary action as per the University of Queensland policy.

The outcome and any subsequent actions of the investigation and response must be documented and kept secure on official personnel files. Access to this information must be restricted to those that have a proper or lawful right to this information.

At the conclusion of the investigation process, a full review of the incident and all subsequent actions must be undertaken by QCIDD to determine the effectiveness of the response procedure and highlight good practices and actions that may be implemented to minimise the risk of the situation re-occurring.

### ***What is expected in terms of support and debriefing***

QCIDD must ensure that the person subjected to abuse, assault or neglect, is provided with a referral where possible to access support, counselling and/or debriefing. Local advocacy services, the University of Queensland or the Office of the Adult Guardian will be contacted for advice.

QCIDD will offer other involved or concerned staff an opportunity for debriefing as well as informing them of other available counselling or support services.

QCIDD is aware that referrals for support, counselling and debriefing may also need to be provided to other service users, families and carers or advocates of the victim(s).

In addition to the requirements of this protocol, the QCIDD Director must be aware of employees' rights to safety and security and the obligations of employers under the *Workplace Health and Safety Act 1995* and the *Workplace Injury Management and Workers Compensation Act 1998*.

## *Attachment 1*

### **Rights and protections of the *Disability Services Act 2006***

The Act states:

*People with a disability have the same human rights as other members of society and should be empowered to exercise their rights.*

The Act recognises that all Queenslanders have a role to play in supporting and promoting the rights of people with a disability. People with a disability have the right to:

- respect for their human worth and dignity as individuals
- realise their individual capacity for physical, social, emotional, cultural, religious and intellectual development
- live lives free from abuse, neglect or exploitation
- participate actively in decisions affecting their lives, including the development of disability policies, programs and services.

The Act also identifies some specific rights for people with a disability when they are receiving disability services. The Act identifies that people with a disability have the right to receive services that:

- support achieving quality of life within their family and community
- minimise restriction of their rights and opportunities
- respect the confidentiality of personal information
- are in a safe, accessible built environment appropriate to needs
- provide support to enable complaints to be made about services without fear of negative consequences
- provide support and access to information that enable them to participate in decisions affecting their lives
- are appropriate to their disability and cultural background.

The rights of people with a disability specified in the *Disability Services Act 2006* are additional to, and do not diminish or limit, a person's ordinary human rights.

## Attachment 2

### Definitions:

*Abuse* means any act of commission or omission that harms or impedes a person's physical and/or emotional health, well being and development.

*Physical abuse* means non-accidental acts which result in physical pain or injury, and which may include physical coercion and physical restraint.

*Chemical abuse* means any misuse of medications and prescriptions, including the withholding of medication and over-medication.

*Legal or civil abuse* means denial of access to justice or legal systems that are available to other citizens.

*Sexual abuse* means any sexual contact between an adult and child 16 years of age and younger; or any sexual activity with an adult who is unable to understand, has not given consent, or is threatened, coerced or forced to engage in sexual behaviour.

*Psychological or emotional abuse* means language or actions designed to intimidate another person which are usually characterised by sustained, repetitive inappropriate behaviour that damages or reduces the potential of cognitive processes and/or results in a person suffering emotional deprivation or trauma. It may include verbal assaults, threats of maltreatment, harassment, humiliation or intimidation, or failure to interact with a person or to acknowledge that person's existence. This may also include denying cultural needs and preferences.

*Financial abuse* means the illegal or improper use or mismanagement of a person's money, property or resources. Stealing, fraud, forgery, embezzlement, forced changes to a will, inappropriate removal of a client's financial decision making powers and misuse of power of attorney are all forms of financial abuse or exploitation.

*Religious and spiritual abuse* means the use of coercion or manipulation to dominate and influence a person's religious and spiritual beliefs or expressions. Religious abuse occurs when a person's own religious position, be it no religion or a particular religious denomination or faith, is rejected and coercion is used to force a different religious position onto a person. Spiritual abuse occurs when a person forces, expects or encourages another to have the same thoughts, feelings and experiences as them in relation to God and/or the "spiritual" world.

*Neglect* means failure to provide the necessary care, aid or guidance to dependent adults or children by those responsible for their care.

***Physical neglect* means failure to provide adequate food, shelter, clothing, protection, supervision and medical and dental care, or to place persons at undue risk through unsafe environments or practices.**

*Passive neglect* means the non-wilful failure to fulfil care-taking responsibilities because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.

***Willful deprivation* means wilfully denying a person who, because of age, health or disability, requires medication or medical care, shelter, food, therapeutic devices or other physical assistance - thereby exposing that person to risk of physical, mental or emotional harm.**

*Emotional neglect* means the failure to provide the nurturance or stimulation needed for the social, intellectual and emotional growth or well being of an adult or child.

### **Attachment 3**

Contact details for The Office of the Adult Guardian

PO Box 13554  
George Street Qld 4003

Level 3  
Brisbane Magistrates Courts Complex  
363 George Street  
Brisbane Qld 4000

Telephone: (07) 3234 0870 or 1300 653 187 (the cost of a local call if you live outside the Brisbane area)

Facsimile: (07) 3239 6367

E-mail: [adult.guardian@justice.qld.gov.au](mailto:adult.guardian@justice.qld.gov.au)