Disclosure Policy

Summary:
This policy is in place to guide the Department for Communities and Social Inclusion in decision-making and action relating to the disclosure of sensitive information to groups or individuals who may have an interest in this information.

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1 **Purpose**

This policy aims to:

- Guide the Department for Communities and Social Inclusion (DCSI) in decision making and action relating to the disclosure of sensitive information to groups or individuals who may have an interest in this information
- Ensure a systematic, consistent, considered, defensible and transparent approach to disclosure
- Support the safety and wellbeing of departmental clients, other at-risk people and the community
- Ensure DCSI meets its legal and other obligations in relation to disclosure
- Minimise risk to clients, other parties and DCSI.

2 **Context**

The *Report of Independent Education Inquiry 2012–2013* (Debelle Report) considered the disclosure of information to parents and caregivers by the Department for Education and Child Development (DECD) when allegations of sexual misconduct against children are made. The Debelle Report noted that DECD should have in place sufficient processes in order to assess whether, and when, to disclose information to different groups who have an interest in obtaining the information. Following the incidents that triggered the Debelle Inquiry, and after the release of the Report, Government Ministers made a number of public statements indicating the government would undertake disclosure in relation to vulnerable persons who may be at risk of abuse or harm.

DCSI also encounters situations where questions arise regarding disclosure. This includes, for example, where serious and credible allegations are made about the abuse of a client by a worker (of DCSI or a service provider) and there is the potential that others may also have been harmed. Therefore, following the release of the Debelle Report, DCSI committed to developing a policy to guide disclosure decisions and practice across the Department.

DCSI delivers and funds programs and services to children, young people and adults in a range of settings, including many who are vulnerable and at risk. The vulnerability of these clients, and the nature of the services provided, heightens DCSI’s responsibilities and duty of care, particularly for those who are vulnerable due to age, disability or life circumstances.

DCSI routinely manages a range of client incidents, of varying severity, guided by policies and guidelines at both the departmental and divisional level. The Disclosure Policy is an important adjunct to these policies and procedures. All existing and future operational documents in relation to client incident management must be consistent with this policy.
3 **Risk**

Without a consistent, defensible, rigorous and transparent approach to disclosure, DCSI risks causing or compounding harm to clients, alleged perpetrators and others in the community; litigation; loss of reputation and community confidence; financial loss and consumer dissatisfaction. This may occur through disclosing information inappropriately or illegally; disclosing information that is misleading, untested, inaccurate or false; or not disclosing information when it was reasonable to do so.

4 **Reference Documents and Links**

4.1 **Directive Documents**

- Evidence Act 1929
- Young Offenders Act 1993
- Disability Services Act 1993
- Children’s Protection Act 1993
- State Records Act 1997
- National Disability Insurance Scheme Act 2013
- Guardianship and Administration Act 1993
- Mental Health Act 2009
- Youth Justice Administration Act 2016
- Supported Residential Facilities Act 1992
- Master and Service Agreements between DCSI and service providers
- Cabinet Administrative Instruction 89/1 (Information Privacy Principles)
- Information Sharing Guidelines for Promoting Safety and Wellbeing

4.2 **Supporting Documents**

- Disclosure Assessment Guideline

4.3 **Related Documents and Resources**

- Managing Critical Client Incidents Policy and Divisional guidelines
- South Australian Family Safety Framework
- DCSI Riskman Incident and Feedback Entry Management Guide
- Divisional policies, procedures and guidelines relating to client incident management
5 **Scope**

This policy applies to all DCSI divisions that are involved in any way with the provision of direct client services or that fund service providers to provide services on behalf of DCSI.

**Included:**

An Initial Disclosure Assessment must be conducted for all critical client incidents, to identify if a full Disclosure Assessment is required. Disclosure considerations must be an integral aspect of Critical Client Incident Management.

Disclosure should also be considered for any other client incidents of extreme and high severity where there is the likelihood of significant harm to the client and/or other parties (whether current or in the past), and where it may be seen that DCSI has a duty of care to disclose information to prevent harm or ameliorate its effects.

**Excluded:**

The scope of this policy does not include information that DCSI is legally compelled to disclose.

Mandatory reporting and notification requirements are not within the scope of this policy and do not constitute disclosure. This includes, but is not limited to, reporting incidents and providing information to South Australia Police (SAPOL), the Coroner, the Health and Community Services Complaints Commissioner, the Guardian for Children and Young People, the Child Abuse Report Line, and to line managers or other areas within DCSI (such as the Investigations team, Incident Management Unit).

This policy does not apply to the routine provision of factual information to the legal guardians or next of kin of clients directly involved in an incident. Following a client-related incident, legal guardians or next of kin should generally be provided with details as soon as practicable and in accord with relevant legislation, and DCSI policy and guidelines. However, it is noted that the facts and circumstances of each case must still be carefully reviewed to ensure legal and policy requirements are adhered to. This should take into account any special circumstances, restrictions or impediments to the provision of information (for example, consent to the provision of information by the client when they are aged over 18 years and not under a guardianship order; if a client is estranged from next of kin; if an investigation is underway). In such circumstances, decisions should be made using a person-centred approach and within the framework of this policy.

6 **Definitions and Terminology**

**Client:** A person who receives, relies on or benefits from services delivered by DCSI or its service providers. Interchangeable terms used include consumer and customer. Some areas of DCSI use specific descriptions depending on the service setting, for example, people we support, resident or tenant.
**Critical Client Incident:** An event (or alleged event) that occurs as a result of, or during the delivery of services directly provided by DCSI or a service provider, and has caused, or is likely to cause, significant negative impact to the health, safety or wellbeing or a client or service recipient (see Critical Client Incident Policy).

**Defamation:** A statement or communication that carries an imputation that tends to lower the general estimation of the subject in the minds of ordinary, reasonable and fair-minded members of society.

**Disclosure:** Providing relevant factual information about an incident to others not directly involved in the incident but who may be affected, either directly or indirectly (for example, other clients who may have been harmed and/or their families, guardians and caregivers).

**Disclosure Action Plan:** Formal, detailed and documented plan to guide resulting actions when disclosure, or an alternative strategy, is recommended. Refer to the Disclosure Action Plan.

**Disclosure Assessment:** A formal and structured assessment by senior personnel to consider grounds for disclosure and develop recommendations for approval. A full disclosure assessment must include:

1. An assessment of information and evidence
2. An assessment of legal and other obligations
3. An assessment of risk
4. Development of recommendations for consideration by the Director Incident Management, including proposed Disclosure Action Plan if deemed that disclosure or an alternative strategy may be required.

Refer to the Disclosure Assessment Guidelines for further detail.

**Disclosure Assessment Meeting:** A formal meeting to undertake the Disclosure Assessment (see above).

**Service provider:** refers to an agency or person (includes Local Government) registered on the Disability Services Provider Panel (DSPP) or funded by DCSI to provide services to a client and/or their family. This may include DSPP providers, who are registered to deliver services under the National Disability Insurance Agency (NDIA).

**Critical Client Incident Manager:** is a departmental officer responsible for managing a client incident until its conclusion. All Critical Client Incidents must have a Critical Client Incident Manager appointed, who is usually at Director level. Critical Client Incident Managers may also be appointed for other client incidents when determined necessary and appropriate.

**Initial Disclosure Assessment:** An initial review of an incident, generally led by the Critical Client Incident Manager or senior responsible officer, to identify if there are any disclosure considerations. Refer to Disclosure Assessment Guideline for further detail.
7 Policy Detail

7.1 Guiding Principles

1. **Primary commitment to clients:** The safety, wellbeing and best interests of clients, vulnerable people and the community is a primary consideration in decision-making and practice under this policy.

2. **Legal and ethical obligations:** We will at all times act legally and ethically and in accordance with government policy.

3. **Evidence and risk:** Decisions will be based on a thorough assessment of evidence, risks and options. Our decisions will be robust and defensible. If new evidence or risks emerge or situations change, decisions will be reviewed.

4. **Fairness and rights:** We will act fairly and with due consideration to the rights and interests of all parties, including victims, their families and alleged perpetrators.

5. **Timeliness:** Decisions will be made in a timely manner.

6. **Transparency and accountability:** We will be transparent and accountable in our decision-making. Disclosure assessments, decisions and actions will be documented and records will be kept. If we make a mistake, we will acknowledge it and seek to remedy it as soon as possible. If misinformation is disseminated, it will be corrected as soon as possible.

7. **Consultative:** Decisions are better when made in consultation. Disclosure decisions are complex and will be based on consultation and expert advice.

8. **Risk aware:** We will be risk aware but not risk averse. We will seek to minimise risks to all parties.

9. **Privacy:** Personal information will be collected, managed, used and disclosed in accordance with relevant policy and legislation and in a manner that is respectful to the individuals involved. Personal information, particularly sensitive information, will be reported and disclosed on a strictly ‘need to know’ basis, with systems and processes that support the privacy and security of information and respect for the affected people.

7.2 Requirements

Disclosure considerations must be a key component in the response to, and management of, all critical and serious client incidents.

A disclosure assessment must be undertaken for all designated critical client incidents. Disclosure issues must also be considered in all high or extreme client incidents.
Disclosure is most likely to be relevant when the incident relates to allegations of abuse or neglect of a client by a worker or other party.

In many critical and high or extreme incidents, there is no case for disclosure, for example, when there are no other likely victims (for example, a client has been harmed in a one-off accident). However, a brief initial disclosure assessment must still be undertaken and recorded.

Disclosure will only be undertaken when there are compelling reasons for doing so; when harm, or potential harm, is significant; and where there are no legal or procedural prohibitions or restrictions. Disclosure must not impede or hinder any criminal investigations.

Disclosure assessments and decisions must take into account:

- The nature, quality and reliability of the evidence/information
- The likelihood that there have been other victims, and that others have been significantly affected or harmed
- The potential for others still to be at risk of significant harm or to require assistance to alleviate the effects of such harm
- The nature of the harm or risk and its severity
- The vulnerability of those affected
- What clients, their guardians, next of kin and the community may reasonably expect in such a circumstance
- The risks in disclosing, and not disclosing, information
- The legal status of the matter, including legal obligations, prohibitions and risks
- Consent requirements and obligations (relating to the use and disclosure of personal information)
- DCSI’s responsibilities in the matter and the responsibilities of other agencies or bodies (for example, for case management, guardianship)
- Any alternative or complementary strategies to disclosure (for example, collecting more evidence, monitoring the wellbeing of clients for signs of distress, other strategies to reduce or manage risk, consultation with service providers, disclosing of limited information only)
- Who should be consulted or advised before disclosure takes place
- Exactly what information will be provided, to whom, for what purpose and with what justification, and how (Disclosure Action Plan).

(Refer to the Disclosure Assessment Guideline and Disclosure Action Plan).
In some circumstances, decisions in relation to disclosure will need to be made urgently or out of hours. Therefore, strategies must still be put in place to ensure the processes and requirements of this policy are adhered to (for example, to rapidly convene a high level disclosure assessment meeting face-to-face or by telephone, seek the required advice, develop a plan and obtain the necessary approvals, including from the Director Incident Management, Executive Director Corporate Services and Chief Executive). Processes, consultation and decisions must also be documented and records maintained.

### 7.3 Consultation and Advice

Disclosure decisions must always be made in consultation and never in isolation.

- If the initial assessment indicates that disclosure may be warranted, the Critical Client Incident Manager, or designated responsible manager/Director and Director Incident Management must convene a Disclosure Assessment Meeting of key stakeholders to undertake a structured assessment and develop a plan and recommendations. This meeting should include senior departmental and other stakeholders with expert knowledge and relevant responsibilities, for example, the case manager, the DCSI Legal Unit, Misconduct or Investigations team (Incident Management Unit). Legal advice must be sought when there is likelihood that disclosure may be recommended.

- In matters where there is police involvement (an ongoing investigation, charges, or a matter is before the Courts), disclosure must not take place without appropriate consultation with SAPOL.

- Consultation may also need to take place with other stakeholders, including DCSI Insurance Services, service providers, other government departments and where relevant, appropriate Aboriginal people.

- These consultations must be documented and will inform the final disclosure plan and determination on disclosure.

- Recommendations of the Disclosure Assessment Meeting must be provided to the Director Incident Management for approval. If disclosure is recommended and supported by the Director Incident Management and the Executive Director Corporate Services, the Chief Executive must be briefed and provide formal approval.

- When disclosure is determined as warranted, a written briefing must be provided to the Minister outlining the reasons for the decision and the Disclosure Action Plan.
7.4 Disclosure options

Once a decision to disclose has been made, there will generally be four options available to DCSI:

- Request a third party, such as a service provider, to disclose information to relevant persons.
- Compel a third party, such as a service provider, to disclose information to relevant persons.
- Disclose information directly.
- Determine that there are other legitimate ways for information to be sufficiently and responsibly disseminated (for example, through a SAPOL investigation).

Refer to Disclosure Assessment Guideline for further details.

Disclosure is not a one-off process. Executive Directors, Critical Client Incident Managers and other key stakeholders within the department (such as DCSI Legal Unit) should remain mindful of disclosure issues throughout the life of an incident/investigation. Decisions may need to be reviewed or re-assessed when circumstances change, for example, if an individual is arrested and charged, or committed to trial, or if new information emerges.

8 Roles and Responsibilities

The Chief Executive is responsible for:

- Encouraging a culture where critical and high severity client incidents are dealt with seriously and thoroughly, including considerations of disclosure
- Ensuring effective systems and processes are in place across the department in relation to disclosure.

Executive Director, Corporate Services is responsible for:

- Ensuring DCSI meets its legal and other obligations in relation to disclosure
- Liaising with the Director, Incident Management regarding disclosure issues
- Reviewing Disclosure action plans and recommendations, and providing formal approval when it is determined disclosure is warranted.

Director, Incident Management is responsible for:

- Liaising at a senior level to resolve disclosure issues
- Making the final decision when disclosure is recommended, in conjunction with the Executive Director Corporate Services
- In consultation with the Critical Client Incident Manager and relevant Executive Director, determining if a full disclosure assessment is
required and if so, ensuring a Disclosure Assessment Meeting is convened

- Seeking additional advice, and/or liaising at a senior level across government and with service providers or other stakeholders, as required
- Ensuring all relevant evidence and advice has been sought, included and thoroughly considered
- Providing advice and support to staff across the department, including the Chief Executive, and Executives, in relation to this policy
- Developing relevant guidelines, resources and systems
- Maintaining a central register of incidents in which disclosure occurs
- Review and ongoing development of the policy, guidelines and associated systems
- Providing summary reports and briefings to the Chief Executive and Executive Leadership Team.

**Executive Directors are responsible for:**

- Ensuring their Divisions are compliant with this policy and have relevant guidelines and systems in place
- Ensuring decisions and actions are thoroughly documented, and records are created and maintained in accordance with the State Records Act 1997.

**Critical Client Incident Managers are responsible for:**

- Undertaking an initial disclosure assessment for all critical client incidents and high or extreme severity level client incidents and advising the Director Incident Management
- Implementing and monitoring approved Disclosure Action Plans
- Establishing and maintaining high quality official records in relation to disclosure assessments, meetings, decisions and practice
- Preparing all required briefings and documentation
- Remaining mindful of disclosure issues throughout the life of an incident/investigation, and reviewing decisions should circumstances change or new evidence emerges.

9 **Aboriginal Impact Statement Declaration**

The needs and interests of Aboriginal people have been considered in the development of this policy. It is noted that a cultural impact assessment may be required for Aboriginal clients and additional considerations included in the Disclosure Plan. These specific factors may include, for example, the provision of information to family, kin and community and the requirement to seek specific cultural advice.
# Approval

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