

Duty of care and dignity of risk

Version: 1

Published: 9 Sep 2020, 1:47 PM

Last edited: 9 Sep 2020, 1:10 PM

Approved: 9 Sep 2020, Debbie Dunasemant

Next review: 26 Apr 2021

Introduction

A duty of care is a legal obligation for us to take reasonable care for those we support, so as to not cause harm to another person, when that harm could be reasonably foreseen. Workers are required to use their judgement to balance their legal duty of care to ensure a participant's safety and wellbeing is maintained whilst ensuring a participant's right to live an autonomous and self-determining life is supported. This right is referred to as dignity of risk.

We recognise that when duty of care and dignity of risk is balanced it promotes positive risk-taking for the participant which:

- improves autonomy, social interaction and health
- supports independent living and self-determination, and
- enables a person-centred approach.

When duty of care and dignity of risk is not appropriately balanced it can have negative impacts on both the participant and workers. The participant may feel patronised, overprotected and a loss of dignity. Whilst workers may be found negligent for failing to fulfil their obligation of duty of care to participants. It is therefore important that our workers understand and take appropriate actions to ensure they fulfil their duty of care and support participants' right to dignity of risk.

Applicability


When
<ul style="list-style-type: none"> • applies to all areas of service practice.
Who
<ul style="list-style-type: none"> • applies to all representatives including key management personnel, directors, full time workers, part time workers, casual workers, contractors and volunteers.


Definitions


Term	Description
dignity of risk	The right of the individual to choose to take some risk in engaging in life experiences.

duty of care	A legal duty to take reasonable care or preventative measures so a participant is not harmed or does not cause harm to another person that could be reasonably foreseen.
harm	Injury or damage to an individual or their property. Harm can be: <ul style="list-style-type: none"> • psychological • physical • emotional, or • financial.
negligence	Not providing the standard of care required by a worker's position, qualifications and experience, and resulting in injury to the person with a disability in a worker's care. This can result in a civil action against the worker and/or the organisation.

Documents relevant to this policy


Duty of care and dignity of risk (easy read)


NDIS (Quality Indicators) Guidelines 2018 (Cth)



Standard of care

As an organisation we are responsible for ensuring all workers have the necessary qualifications, experience and understanding to navigate duty of care obligations and dignity of risk decisions. This may be achieved through:

- training and education, and
- consultation with participants and their support networks to understand their personal goals, values and boundaries.

Duty of care

We are responsible for ensuring that our standard of care supports participants to live a meaningful and independent, as possible, life. However, it also means taking necessary caution and proactive measures when certain risks present in everyday life for the participants we support.

When a situation, choice or activity arises where duty of care and dignity of risk need to be considered, it is important we factor:

- participant's previous experience in similar situations
- participant's desires, opinions, goals, values and knowledge
- the context in which the decision is being made
- the possible outcomes and extent of harm to the participant and others if the participant does pursue the choice.

If there is a reasonable and foreseeable chance of significant harm to the participant or others, then it is our legal responsibility to act with a duty of care. This may include:

- discussing with the participant the potential outcomes and ways they may be able to protect themselves or others
- adjusting the environment or activity to eliminate potentially harmful outcomes
- assisting in the action or activity where the risk or hazard is likely to occur, or as a last alternative
- stopping or postponing the activity.

If there are no reasonable adjustments or assistance that can be offered it may be necessary to intervene or stop the choice or activity. If this occurs, the worker will discuss the decision with the participant and explain why they made that decision and ways in the future it may be navigated.

Dignity of risk

Whilst we are responsible for maintaining a duty of care, it is also our responsibility to allow participants to take risks. Like all adults, it is participants' right to learn from experience even if the outcomes may pose a potential risk.

Any decision a participant makes will be supported as far as practicable whilst maintaining a duty of care.

Any dignity of risk decision made by a participant will not provide the basis for service withdrawal or denial.

Breach of duty of care

A breach of duty of care is a failure to meet the relevant standard of care. This means that a worker either does something that has put the participant at risk which resulted in foreseeable harm, or they did not act to protect the participant when there was reasonable expectation or foreseeable risk that it would result in harm. This is known as negligence.

If a worker or organisation is found to have breached their duty of care or a participant's right to the dignity of risk, we will promptly investigate all allegations. This may result in disciplinary action up to and including termination of employment.

If the worker or organisation is found to be negligent, this may result in civil legal action.