



EMPOWERING YOU DISABILITY SERVICES

DUTY OF CARE AND DIGNITY OF RISK

Introduction

Empowering You Disability Services (EYDS) will recognise the right of participants to make informed choices and to take calculated risks.

Every person has the right to experience and learn from life, to take advantage of opportunities, develop skills and independence even when these situations may pose a risk to their wellbeing.

EYDS recognises they have a duty of care to prevent or minimise harm to the participant and their staff. The safety of the participant and the staff are considered in conjunction with risk taking and if required takes priority over risk taking, privacy and confidentiality.

Applicability

When

Applies at all times when managing risks and decision making.

Who

Applies to all employees and participants.

Duty of care

Duty of Care: Is the obligation to take reasonable care to avoid injury to a person whom it can be reasonably foreseen might be injured by an act, or omission.

A duty of care exists when someone's actions could reasonably be expected to affect other people. It means, being in a position where someone else is relying on you to be careful and conscientious to prevent him or her suffering any harm. On the other hand, clients have the right to have opportunities to do and experience new things, to develop their independence and take risks.

This means that employees are expected to think about what they do in this context and make reasonable informed and balanced decisions for the benefit of the clients.

As part of the overall quality of service provided to clients, your actions must avoid any harm coming to clients or others in the community. To act otherwise may be considered negligent.

In a legal sense, to breach a duty of care, you must have done something unreasonable involving a client or other person to whom you owe a duty, and this unreasonable behaviour must have resulted in harm to the other person. From an organisational perspective a breach that did not result in harm could still be an act that requires disciplinary action.

You should note that unreasonable behaviour includes failure to act. As an employee your duty of care can be breached either by action or inaction. Harm to another person can include a physical injury, nervous or emotional shock and/or financial loss.

Dignity of risk

Dignity of Risk: Is the belief that each person that is aged, frail aged or with a disability is entitled to experience and learn from life situations even if these, on occasion, may be a threat to their well-being. Each person experiencing a risk, of which they have been informed, is to receive support in the situation.

Dignity of risk is a fundamental privilege of adulthood and a vital element of learning. Often when we take a chance, the outcome is not what we had planned. We view these events as "live and learn" experiences, and often we elect to take a second chance to see if we can do better the next time. While it is wise to ask for advice from those who have "been there" when we try new experiences, no one expects anyone to curtail our freedom to the extent that we never risk making a mistake.

For people with disabilities, the ability to take chances goes to the heart of their right to live the meaningful lives any adult expects as a matter of course. While no one wants anyone to be unsafe or to be victimised, the reality is that all of us take chances every single day. There is risk in almost every choice we make.

When a person with a disability wishes to make a choice that seems risky to us, we must ask ourselves the following questions. What is the level of risk here? How likely is it that there will be a genuinely catastrophic outcome?

Where possible, and without necessarily excluding spontaneous events, it is important to set the client up for success when supervising an activity that includes an element of risk. This occurs when the client's skills, training, and careful planning are taken into account. In this way you are able to consider both your duty of care and the client's dignity of risk.

Some examples of where dignity of risk may apply include when a client:

- Carries their drink from the kitchen bench to the sink
- Chooses their clothes for the day
- Buys an item or pays a bill
- Uses public transport for the first time
- Chooses a leisure activity such as horse riding.

Considerations for duty of care and dignity of risk

Duty of care and dignity of risk must be considered in all decisions you make as an employee. In making a decision, ask the following questions:

- What is the risk of harm?
- How serious could the harm be?
- What precautions can I take?
- What legal obligations do I have as an EYDS employee?
- What is the purpose of the activity – that is, is it worthwhile taking the risk?
- Are there any relevant organisational instructions or practice instructions?
- What are the current professional standards on this matter?

All of these questions must be considered together. Not one single question should be overlooked. It is difficult to assess some circumstances. You need to seek advice from your team leader or case manager if you have any doubt about the appropriateness of your actions.

Participants will always be supported to make informed choices and decisions about the supports they receive and activities they may wish to undertake. This may require the support of others with the participant's consent (family / friends / advocates or other professionals). Informed decision making involves a general awareness of the consequences of the decision which needs to be made voluntarily and without coercion.

EYDS staff will assess risks and their potential consequences and will balance their duty of care with dignity of risk. Where a dignity of risk issue is in conflict with a Work Health and Safety (WHS) issue, the WHS legislation overrides dignity of risk.

When a privacy issue is in conflict with EYDS's duty of care, the duty of care responsibility will take priority e.g. mandatory reporting.

In situations where duty of care obligations outweighs dignity of risk the participant should be informed of the decision and why the decision was made.

When balancing duty of care with dignity of risk, the EYDS team will work with the participant to:

- Explain the issues of duty of care and dignity of risk which impact on a particular situation
- Identify the consequences of a particular action including the risk/s and likelihood of harm to the participant or others
- Assess the type and seriousness of the possible harm
- Identify what precautions could be taken to minimise the risk/s or harm or the seriousness of the risk/s or harm
- Assess the participant's ability to make informed decisions
- Weigh up the benefits and importance of the activity to the participant against the possible negative consequences
- Generate solutions to achieve the benefits to the participant whilst minimising the potential harm.