

DUTY OF CARE AND DIGNITY OF RISK

Introduction:

We acknowledge part of our role in supporting clients is to provide a safe and supportive environment. Within our supportive capacity we must perform all activities and roles with a duty of care weighted against our clients right to perform activities that pose a certain level of risk. This policy outlines how we manage this responsibility.

Applicability

When

- Applies at all times when managing risks and decision making.

Who

- Applies to all employees and clients

Definitions:

Term	Description
Duty of care	“The legal obligation to avoid causing harm to another person, especially through negligence, which only arises where it is reasonably foreseeable that in a particular situation the other person would be harmed by one’s actions unless one exercises reasonable care” (Macquarie Dictionary of Law).

Duty of care

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 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 a FCLT 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 service coordinator or service manager if you have any doubt about the appropriateness of your actions.