

## COMPETENCIES

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Communication

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Critical Thinking & Decision Making

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Accountability

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Teamwork & Collaboration

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Leadership

## SCOPE

This guideline applies to the provision of paid support services in the community. They are relevant Australia-wide or when a client is travelling overseas with their Australian team of support worker/s.

## DISCLAIMER

*This guideline is provided to help guide best practice in the disability, aged care and community support industry. This information does not in any way replace legislative, regulatory, or contractual requirements. Users of this document should seek appropriate expert advice in relation to their circumstances. ACIA does not accept any liability on the use of this guideline.*

## PURPOSE

This guideline is to assist:

Service providers (organisations and individuals), clients, stakeholders and funders in the decision making steps to balance dignity of risk and duty of care in the delivery of high quality support services in the community.

Each service provider would have its own risk tolerance as defined by its senior management team and may be documented into a policy. This risk tolerance will need to be considered in the application of this guideline.

## DESIRED OUTCOME

- To assist in enabling service providers, balance their duty of care with the clients' dignity of risk
- To maintain a quality and safe standard of care

# BACKGROUND

In 2008, the United Nations Convention on the Rights of Persons with Disabilities, Article 19, acknowledged the right of the individual to make choices about their life. The National Disability Insurance Scheme (NDIS) ("NDIS Act," 2013) acknowledged dignity of risk as a critical part of a person with a disability's right to choice and control. It states that a person with a disability "should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports ("NDIS Act," 2013, p. 6)". It ensures that the clients' support plan must include any unreasonable risks (Section 44 (2)a), furthermore acknowledging the responsibility of the CEO to manage such risks. The NDIS Commission as a part of their Quality Standards, verifies through the certification processes that "each client's right to dignity of risk in decision making is supported... to make informed choices about... the risks and the options under consideration (Commonwealth of Australia, 2020, p. 6)". The NDIS does go further within their guidelines and standards as opposed to the Aged Care Act, to articulate the extent of engagement on this issue. However, yet again there is a long way to go to supporting the sector to support clients where restraint is demanded by family for safety, or where a person in a group home needs to be restricted from leaving the house for their safety, or the manual handling practice requests of the family are inconsistent with provider expectations, medication administration is provided in a unique manner for the needs of the child with disability, or the cost of adequate supervision of a client is not covered by the NDIS.

Service providers have a responsibility to their clients to reduce or limit the amount of harm or injury they may experience. This means that service providers must anticipate risks for clients and take care to prevent them coming to harm. This responsibility is known as 'duty of care' and it can sometimes seem overwhelming. For example, a service provider's responsibility to one party (for example, its personnel) might conflict deeply with its responsibility to its clients.

The service provider needs to balance the safety of the client against other concerns such as:

- the safety of other people/support workers
- other rights of the client (e.g. the right to privacy)
- the aims of the service (e.g. to assist the client to remain living independently in the community)
- the limits of service provider (e.g. money and other resources)

Dignity of risk supports the rights of clients "to make their own decisions about their care and services, as well as the right to take risks (Commonwealth of Australia, 2021, p. 8)". It is further defined by Ibrahim and Davis (2013, p. 1) as the "principle of allowing an individual the dignity afforded by risk-taking, with subsequent enhancement of personal growth and quality of life". The objective of this paper is to provide greater understanding about dignity of risk in the context of providing a practical lens that overviews the reality of the concept along with the legislative milieu associated with it. Dignity of risk presents one of the most challenging and evolving areas in aged care and disability provision due to the express nature of the legislation to enable and support the concept, however with growing demands on duty of care, ensuring the safety of others and governance requirements, it only but provides a blurry and indeed challenging space for those in the sector to unpack. Despite this evolution, this right for self-determination is inherently in the right of all individuals. It is undertaken throughout the course of ones life, so one may further consider what right does a provider or decision maker have to influence, restrict, or impede an individual's choices of an individual regardless of their physical, cognitive or other impairment.

Dignity of risk, was first introduced into the literature in 1972, by Robert Perske, where it developed an initial narrative on the complexities of the subject, particularly in relation to persons with a disability (Perske, 1972). He outlined that some of our greatest accomplishments came with risks, despite often failing on numerous occasions to achieve these outcomes. Even early into the journey of dignity of risk, Dr Julian Wolpert argued that without the ability of a person to take risk, she hypothesised that there was no dignity (Wolpert, 1980). As well put by Rhonda Nay; "Life itself is a risk. We cannot eliminate risk without eliminating the person" (Nay, 2002).

An overall improved quality of life foundationally supports the position for the advantages in risk-taking. There are values to be had in enriching a person's independence and overall autonomy, as well as improvements in social engagement and interaction, general wellbeing improvements, and health status. Dignity of risk is supported to enrich a persons general self determination and feelings of worth, along with the construct of value added role in society. As presented earlier, life brings with it risk and is largely unpredictable, and this approach intends to facilitate a medium between duty of care and risk. The situational paradigm surrounding the risk may include considering; cognitive ability, the safety considerations, stage of life, the values of the individual, the individual capacity, the experience of the provider and staff engaged with the decision, substitute decision-makers and key stakeholder feedback, legislation requirements and guidance, what is fair and reasonable and the level of supervision required. However, the decision of risk comes largely with the preception and decision associated with choice.

It is highly regarded that clients need choice. This negotiation with clients and key stakeholders in order to improve clients independence and autonomy, involves engaging the person and providing informed consent. Whilst choice is often about giving a voice to the needs and wants of a client, it additionally acknowledges the rights and outcome of the decisions may come with

mistakes and learnings. Engaging conversations about choice requires informed discussion and documented acknowledgment of the levels of risk one is prepared to participate. Ultimately, this supports an increased person centred approach of care and service provision. It furthermore, engages in a value add approach to the needs and values of a person relevant to the stage of life they are experiencing.

The concept of duty of care invariably is linked to dignity of risk. The overall intent of duty of care is making all reasonable and foreseeable efforts to ensure the client does not come to harm. However, there has been reasonable principles within common law that give a person the right to self-autonomy and an innate right to determine how they shall live. It provides precedence for the client to make reasonable and informed risks to the choices that may impact on their life. As set out in the aged care standards, providers need to ensure a balanced approach to managing risks and respecting the rights of the client (Commonwealth of Australia, 2021). The Disability Services Act (2006) Queensland Section 19 (3) acknowledges that persons with disabilities “have the same rights as others.” In its disability framework, it responds to this issue by stating that providers have ensured dignity of risk is considered (Queensland Government). However, it has a long way to go on support this concept of dignity of risk, as do is in the other states, including; Disability Act (2006) Victoria, Disability Inclusion Act (2018) South Australia, Disability Services Act (2011) Tasmania, Disability Services Act (1993) Western Australia, and Disability Services Act (1993) Northern Territory.

Dignity of risk, whilst explicit in its intent and meaning, challenges both the sector and the community at large. A review of dignity of risk provides context to the challenges existing in this domain. The primary challenge is that whilst there is common law precedence for clients taking risk, this isn't as well presented in relevant legislation. The NDIS Act provides the best guidance for safeguarding in this area, however as is inherent in the Aged Care Act and the respective state legislation on disability, there is scant guidelines about the operationalisation of such significant policy directive. Further work needs to develop in this area to provide improved guidance in this area. A suggestion would be in the form of case studies to guide interpretation or risk and escalation criteria for supporting the level of risk immersed in dignity of risk. There is no doubt in the policy direction that dignity of risk is critical to support the choice and control of clients, as with the inevitable journey of life there comes risk, and without risk taking there is no dignity.

## DEFINITIONS & SUPPORTING INFORMATION

**Support Worker** - A paid person who assists people to perform tasks of daily living so as to participate in social, family and community activities in the person's home and their community. Support Workers have been commonly known in the past as attendant care worker, disability worker, aged care worker, community worker, homecare worker, care worker or paid carer.

**Service Provider** - Organisation or person accountable for the delivery of supports to Clients.

**Carer** - a person that provides supports to the Client at no cost (generally family or friend).

**Support Worker Competency** - trained and assessed as competent by a Registered Nurse or a person deemed competent by the provider to safely and appropriately perform a specified task as a support worker.

**Client** means the service user, participant, user, care recipient, consumer or person receiving the nursing or support services.

**Plan** means a Service Plan, Support Plan or Individual Plan (however titled – the plan) is a document developed in response to a request for service. It is developed by a Registered Nurse or a person deemed competent by the provider from the service provider, prior to the commencement of service delivery. It outlines the expected outcomes of the requested care/services and the tasks, duties and interventions required to meet the care and service needs of the client (within the parameters of the funding program). The plan guides and directs the individual support worker or Registered Nurse in their day-to-day delivery of the services.

**Registered Nurse** means a person who has completed the prescribed educational preparation, demonstrated competence for practice, and is registered and licensed with the Australian Health Practitioner Regulation Agency (AHPRA) as a Registered Nurse.

**Consent** means the client (or guardian) has agreed formally or informally (e.g. verbally agreed and then documented in the client's case notes) for the service provider or identified parties to act, discuss or share their information.

**Dignity of Risk** means all clients can have autonomy and self-determination (or dignity) to make choices for themselves. Clients have the freedom to make mistakes and learn from them.

**Duty of Care** is the legal responsibility to avoid acts or omissions, which could be reasonably foreseen to injure or harm other people. Service providers have a duty of care to clients to reduce or limit the amount of harm or injury clients may experience as a result of their support. It is not a duty to protect the client from themselves unless legally required to do so. Service providers also have a duty to their personnel to provide a safe work environment during the course of service.

**Informed Choice** is the process of choosing from options based on accurate information and knowledge.

**Guardian** is a person legally appointed to make lifestyle, health and medical decisions for a client when a client is not capable of doing this for themselves. Examples include public guardian and enduring guardian

**Minimal Restrictive Option** refers to the course of action or environment that allows the client to live, learn and work with minimal restrictions. 'Minimal restriction' or 'minimal intervention' recognises any restrictions on choice and control should be minimal and evidence based.

**Nominee** will be appointed where requested by the client or where necessary by the NDIA to ascertain the client's wishes and maximise their personal and social well-being.

## GUIDELINE

### Service Provider - Decision Making Process

Where an activity or request impacts a service provider's duty of care and a client's dignity of risk, the service provider should:

- Understand the client – consider the client's goals, supports and preferences and willingness and capacity to make an informed choice. The service provider should respect client's autonomy and self-determination to make choices for themselves and take calculated risks within the clients' degree of insight and concern. The service provider should involve the client chosen supporters. Where the client has a guardian or nominee, involve that person (or the Public Guardian) in that decision.
- Understand the activity or request – undertake a risk assessment
- Provide relevant information – to support the client in making an informed choice
- Describe the foreseeable risks, benefits and possible consequences for the activity or request
- Explain the choices in a balanced way. Discuss the risk, benefits and possible consequences of each choice
- Consider consented access to specialist advice or advice from the client's trusted friends or relatives
- Consider reasonable ways to reduce the risks without losing the benefits. Explore minimal restrictive options.
- Explain the effects that each choice may have on the client and those around them, including the people involved in their support
- Communicate in the way that the person is best able to understand
- Give the client time to consider the information and make a decision
- Decline (where necessary) – service providers can decline a request or activity where it is outside of the scope of the funding program, or the service provider has good reason to believe the client's choice may cause harm or pose a threat to the safety of their personnel, volunteers or contractors
- Record – document the discussion, outcomes including mitigation strategies. This should be included in the client's plan.
- Document – where the client has chosen to proceed with the activity that may involve risk, and the service provider has not declined, the service provider is required to provide sufficient evidence that indicates the client has been informed about the risks.
- Manage Complaints – in the event of a disagreement and resolution is not possible, the client should be made aware of the service provider's complaints process and their right to access the Disability Ombudsman in their respective State or Territory.

Not all activities or requests will require this level of consideration and the client should be supported to be involved decision making about their lives. The level of decision making will depend on the severity of the harm/consequence and the likelihood of it occurring. It will also depend on the service provider's risk tolerance to certain activities or requests.

To supplement this decision-making process, a service provider should have its own risk management policies that define the types of activities it is able to support and describes who in the organisation can agree to the activity or request.

# RESOURCE DOCUMENTS

- External ACIA Guidelines 002 – Care and Service Provision in the Community
- Australian Community Industry Standards
- National Disability Insurance Standards
- Aged Care Act., (1997).
- Commonwealth of Australia. (2020). *NDIS Practice Standards: NDIS Practice Standards and Quality Indicators*. (3). Canberra: NDIS Retrieved from <https://www.ndiscommission.gov.au/sites/default/files/documents/2019-12/ndis-practice-standards-and-quality-indicators.pdf>
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