

<b>Title</b>	<b>ACIA 017 - Duty of Care and Dignity of Risk</b>
<b>Purpose</b>	<p>This guideline is to assist:</p> <ul style="list-style-type: none"> <li>• Service providers (organisations and individuals), participants, stakeholders and funders</li> <li>• 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.</li> </ul> <p><b><i>NB: 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.</i></b></p>
<b>Background</b>	<p>In July 2008, Australia ratified <i>The United Nations Convention on the Rights of Persons with Disabilities (the Convention)</i> ensuring participation for people with a disability on the same basis as all people. The Convention highlighted the importance of providing people with disability the opportunity to participate in economic and social life on the same basis as all people, and the right of the individual to make choices about their life (Article 19).</p> <p>The National Disability Insurance Scheme (NDIS) is one way Australia complies with the Convention.</p> <p>The NDIS will provide all Australian’s under 65 who have a permanent and significant disability with the reasonable and necessary supports they need to enjoy an ordinary life. This includes the ability to have choice and control, emphasising the participants’ right to direct and making decisions about what is important to them in leading a good life.</p> <p>This policy change requires service providers to have a greater role in enabling participants to exercise informed choice and control in the delivery of their disability supports.</p> <p>As participant involvement and service direction has increased it is imperative to involve the participant in all aspects of the service delivery and the direction of their services to their ability. It is further acknowledged that dignity of risk is an important part of this choice and control.</p> <p><b><u>Service Provider – Duty of Care</u></b></p> <p>Service providers have a responsibility to their participants to reduce or limit the amount of harm or injury they may experience. This means that service providers must anticipate risks for participants and take care to prevent them coming to harm.</p>

	<p>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 participants.</p> <p>There are several aspects to duty of care:</p> <p><b>legal</b> - what the law suggests we should do?</p> <p><b>professional/ethical</b> - what the industry generally thinks we should do?</p> <p><b>organisational</b> - what the service and its funding body says we should do?</p> <p><b>community</b> - what participants, parents and other community members think we should do?</p> <p><b>personal</b> - what our own beliefs and values suggest we should do?</p> <p><b>It is a balancing act.</b></p> <p><b>The service provider needs to balance the safety of the participant against other concerns such as:</b></p> <ol style="list-style-type: none"> <li>a. the safety of other people/support workers</li> <li>b. other rights of the participant (e.g. the right to privacy)</li> <li>c. the aims of the service (e.g. to assist the participant to remain living independently in the community)</li> <li>d. the limits of service provider (e.g. money and other resources)</li> </ol>
<p><b>Scope</b></p>	<p>This guideline applies to the provision of paid support services in the community. They are relevant Australia-wide or when a participant is travelling overseas with their Australian team of support worker/s.</p>
<p><b>Disclaimer</b></p>	<p>This guideline is provided to help guide best practice in the community service and 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 particular circumstances. ACIA does not accept any liability on the use of this guideline.</p>
<p><b>Definitions and Supporting Information</b></p>	<p><b>Community Supports and/or Services</b> is defined as the provision of paid supports and services in a participant's home or community. It includes but is not limited to, the following activities of daily living:</p> <ul style="list-style-type: none"> <li>• personal care or support</li> <li>• housework or domestic assistance</li> <li>• transport assistance</li> </ul>

- community access
- social support
- nursing services
- clinical supports
- gardening and home maintenance
- palliative care
- respite care

**Support Worker** is an individual who assists or supervises a participant to perform tasks of daily living to support and maintain general wellbeing and enable meaningful involvement in social, family and community activities in the person's home and community. The Support Worker is a paid person who has access to education, support and advice from the **Service Provider** line manager or team leader. **Support Worker** has been commonly known as attendant care worker, disability worker, aged care worker, community worker, homecare worker, care worker or paid carer.

**Service Providers** are organisation or a person who are funded for the delivery of supports and services to participants

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

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

**Dignity of Risk** means all participants can have autonomy and self-determination (or dignity) to make choices for themselves. Participants 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 participants to reduce or limit the amount of harm or injury participants may experience **as a result** of their support. It is not a duty to protect the participant from themselves unless legally required to do so.

These exceptions are:

	<ol style="list-style-type: none"> <li>1. where failing to act/omit results in death or serious permanent disability</li> <li>2. where participant has been deemed (by a tribunal) to lack capacity or</li> <li>3. other Court Order.</li> </ol> <p>Service providers also have a duty to their personnel to provide a safe work environment during the course of service.</p> <p><b>Informed Choice</b> is the process of choosing from options based on accurate information and knowledge.</p> <p><b>Guardian</b> is a person legally appointed to make lifestyle, health and medical decisions for a participant when a participant is not capable of doing this for themselves. Examples include public guardian and enduring guardian</p> <p><b>Minimal Restrictive Option</b> refers to the course of action or environment that allows the participant 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.</p> <p><b>Nominee</b> will be appointed where requested by the participant or where necessary by the NDIA to ascertain the participant's wishes and maximise their personal and social well-being.</p> <p><b>Participant</b> means the participant, consumer, client or person receiving the nursing or support.</p> <p><b>Plan</b> means a Care and Service Plan or Individual Plan (however titled – the plan) is a document developed in response to a request for service. It is developed by an appropriately skilled professional 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 support and service needs of the participant (within the parameters of the funding program). The plan guides and directs the support worker in their day-to-day delivery of the services.</p>
<p><b>Desired Outcome</b></p>	<ul style="list-style-type: none"> <li>• To assist in enabling service providers, balance their duty of care with the participants' dignity of risk</li> <li>• To maintain a quality and safe standard of care</li> </ul>
<p><b>Guideline</b></p>	<p><b><u>Service Provider - Decision Making Process</u></b></p>

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

1. **Understand the participant** – consider the participant's goals, supports and preferences and willingness and capacity to make an informed choice. The service provider should respect participant's autonomy and self-determination to make choices for themselves and take calculated risks within the participants' degree of insight and concern. The service provider should involve the participant chosen supporters. Where the participant has a guardian or nominee, involve that person (or the Public Guardian) in that decision.
2. **Understand the activity or request** – undertake a risk assessment
3. **Provide relevant information** – to support the participant 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 participant'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 participant 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 participant time to consider the information and make a decision
4. **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 participant's choice may cause harm or pose a threat to the safety of their personnel, volunteers or contractors
5. **Record** – document the discussion, outcomes including mitigation strategies. This should be included in the participant's plan.
6. **Document** – where the participant 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.
7. **Manage Complaints** – in the event of a disagreement and resolution is not possible, the participant should be made aware of the service provider's complaints process and their right to access the Disability

	<p>Ombudsman in their respective State or Territory.</p> <p>Not all activities or requests will require this level of consideration and the participant should be supported to be involved in 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.</p> <p>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.</p>
<p><b>Resource Documents</b></p>	<ul style="list-style-type: none"> <li>• Complex Safety and Assessment Tool</li> <li>• Practice Guidance on Legal Issues in Consumer Directed Care, Home Care Today, September 2015</li> <li>• Capacity Toolkit, New South Wales Government, Attorney General's Department</li> <li>• National Disability Standards</li> <li>• Duty of Care, The Department of Health, Australian Government <a href="http://www.health.gov.au/internet/publications/publishing.nsf/Content/drugtreat-pubs-front11-wk-toc~drugtreat-pubs-front11-wk-secb~drugtreat-pubs-front11-wk-secb-6~drugtreat-pubs-front11-wk-secb-6-1">http://www.health.gov.au/internet/publications/publishing.nsf/Content/drugtreat-pubs-front11-wk-toc~drugtreat-pubs-front11-wk-secb~drugtreat-pubs-front11-wk-secb-6~drugtreat-pubs-front11-wk-secb-6-1</a> (last updated 2004)</li> <li>• What is Duty of Care? Duty of Care vs Dignity of Risk by The MHRI <a href="https://www.youtube.com/watch?v=Nf4Y7v-SLtc">https://www.youtube.com/watch?v=Nf4Y7v-SLtc</a></li> </ul>