

Duty of Care & Dignity of Risk

Autism Spectrum Australia (Aspect) ensures that staff understand and implement the principles of duty of care and dignity of risk, recognising the rights of the people we support to make informed choices, and exercise choice and control over their lives, including taking calculated risks. When making decisions about services and supports, Aspect recognises and promotes these rights by promoting and supporting the contribution to decision making by students/participants, their family members, persons responsible, guardians and advocates. This ensures that students/participants have the opportunity to participate as fully as possible in the services they use as an expression of their autonomy and right of self-determination; and acknowledges their valued status in the community.

It is essential that each individual's dignity of risk is respected and supported in their decision making processes. Aspect facilitates each student's/participant's meaningful choice and control to maximise their independence; and minimises the risk to the individual or others wherever possible. This includes:

- providing students/participants with information in a format that facilitates understanding where required. This is to enhance informed decision-making and support the choice between the risks and benefits of the options being considered;
- providing sufficient time for students/participants and their families/support network to consider, review and seek advice about their options in all stages of accessing, receiving and exiting service provision;
- working with the student/participant and their family/ support network to remove any identified barriers to service provision that may occur due to a student's/participant's choices and their associated risk;
- maintaining safe environments for service provision, including ensuring the use of risk management and quality management processes to maintain, monitor and review how and where we provide our services as required; and
- facilitating the involvement of family members, advocates and significant people as appropriate and consented to, for assistance with decisions and choices that suit the individual's development and maintenance of their personal, gender, sexual, cultural, religious and spiritual identity.

Aspect promotes ethical, respectful and safe service delivery which meets legislative requirements, as a minimum, and achieves positive outcomes for people we support in accordance with human rights principles and conventions, and relevant State and national legislation. Aspect recognises the duty of care it owes to students and participants to take reasonable care to protect their safety and wellbeing. However, this does not override the rights of students/participants, and all staff will respect their rights to privacy and confidentiality, freedom of movement, autonomy, self-determination, intimacy in relationships and sexual expression. The relevant Aspect procedures and Code of Conduct guide the decision making of Aspect staff in relation to this policy and are applied to manage any negligence, breach or failure of duty care.

Aspect staff have a legal duty to take action to address challenging behaviours that are harmful to students/participants or to others, but this does not permit them to do anything unlawful such as wrongful imprisonment, assault, or use of a prohibited practice, which includes inappropriate application of a restrictive practice.

Activities both at Aspect services/schools and in the community are aligned with an individual's learning outcomes, personal goals or aspirations. Aspect encourages and supports students/participants to make the most of opportunities and activities in their local community and in the wider community. Participating in activities in the community provides participants and students with opportunities to

- join in activities and programs in their local community;
- learn and practise new skills, including generalising and transferring skills across environments;
- be independent and self-reliant;
- establish maintain social relationships;
- take responsibility for choices and decisions they make.

External Framework

The Duty of Care and Dignity of Risk policy illustrates Aspect's adherence to the:

- NDIS Practice Standards (2018) and NDIS Code of Conduct, specifically within the NDIS Practice Standards and Quality Indicators:
 - Core Module: 1. Rights and Responsibilities, under all Outcomes.
 - Core Module: 2. Provider Governance and Operational Management, under the relevant Outcomes.
 - Core Module: 3. Provision of Supports, under all Outcomes.
 - Core Module: 4. Support Provision Environment, under all Outcomes.
 - Supplementary Module: 1. High Intensity Daily Personal Activities, under the relevant Outcomes.
 - Supplementary Module: 2. Specialist Behaviour Support Module, under all Outcomes.
 - Supplementary Module: 2a. Implementing Behaviour Support Plans, under all Outcomes.
 - Supplementary Module: 3. Early Childhood Supports, under all Outcomes.
 - Supplementary Module: 4. Specialist Support Coordination, under all Outcomes.
- Disability Standards for Education (2005), specifically:
 - Part 3: Making Reasonable Adjustments;
 - Part 5: Standards for Participation;
 - Part 6: Standards for Curriculum Development, Accreditation and Delivery;
 - Part 7: Standards for Student Support Services; and
 - Part 8: Standards for Harassment and Victimization.
- NESA Registered and Accredited Individual Non-government Schools (NSW Manual), specifically:
 - 3. Requirements for Registered Non-government Schools, under requirements for Curriculum; and Safe and Supportive Environments.
- Standards for Registration and Review of Registration of Schools in South Australia, specifically the relevant quality related criteria for:

- Standard 2 Student Learning and Assessment
- Standard 3 Student Safety, Health and Welfare
- Australian Human Rights Commission's National Principles for Child Safe Organisations specifically:
 - 1. Child safety and wellbeing is embedded in organisational leadership, governance and culture;
 - 2. Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.
 - 3. Families and communities are informed and involved in promoting child safety and wellbeing.
 - 4. Equity is upheld and diverse needs respected in policy and practice.
 - 5. People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.
 - 6. Processes to respond to complaints and concerns are child focused.
 - 7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.
 - 8. Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.
 - 9. Implementation of the national child safe principles is regularly reviewed and improved.
 - 10. Policies and procedures document how the organisation is safe for children and young people.

Critical Definitions

Dignity of Risk – promotes each person's autonomy and self-determination to make their own choices, including the choice to take some risks in life. All people are entitled to experience and learn from life situations and may choose to assume some risk in doing so.

Duty of Care – is the obligation that exists in certain relationships, such as between a service provider and a client, to take reasonable care to protect a person's safety and well-being.

Negligence – is the failure to exercise reasonable care to protect the safety and well-being of a person to whom a legal duty of care is owed. It is the basis for a civil claim for damages for harm caused as a result of any breach of duty of care.

Self-determination – refers to the right of individuals to make choices and decisions about their own lives. It reflects a core belief that people who use Aspect services can pursue meaningful outcomes and exercise control over their lives with respect to the services they are being provided.

Wrongful imprisonment – is deliberately confining a person to a particular place without lawful justification..

Legislation References

National

Disability Services Act 1986 (Cth)

Disability Standards for Education 2005 (Cth)

Freedom of Information Act 1982 (Cth)
National Disability Insurance Scheme Act 2013 (Cth)
National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and other measures) Bill 2017 (Cth)
National Standards for Disability Services 2014 (Cth)
Privacy Act 1988 (Cth)
Privacy Amendment (Enhancing privacy protection) Act 2012 (Cth)
Privacy Amendment (Notifiable data breaches) Act 2017 (Cth)
Privacy Amendment (Private Sector) Act 2000 (Cth)
Work Health and Safety Act 2011 (Cth)

New South Wales

Child Protection (Offenders Registration) Act 2000 (NSW)
Child Protection (working with children) Act 2012 (NSW)
Child Protection (Working with Children) Amendment (Statutory Review) Bill 2018 (NSW)
Children and Young Persons (Care and Protection) Act 1998 (NSW)
Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 (NSW)
Children's Guardian Act 2019 (NSW)
Community Services (Complaints, Reviews and Monitoring) Act 1993 (NSW)
Disability Inclusion Act 2014 (NSW)
Poisons and Therapeutic Goods Act 1966 (NSW)
Privacy and Personal Information Protection Act 1998 (NSW)
Work Health and Safety Act 2011 (NSW)

Victoria

Children Youth and Families Act 2005 (Vic)
Crimes Amendment (Protection of Children) Act 2014 (Vic)
Disability Act 2006 (Vic)
Drugs, Poisons and Controlled Substances Act 1981 (Vic)
Freedom of Information Act 1982 (Vic)
Occupational Health and Safety Act 2004 (Vic)
Privacy and Data Protection Act 2014 (Vic)
Workplace Safety Legislation Amendment (Workplace Manslaughter and other matters) Act 2019 (Vic)

South Australia

Children and Young People (Safety) Act 2017 (SA)
Controlled Substances Act 1984 (SA)
Disability Services Act 1993 (SA)
Disability Services (Rights, Protection and Inclusion) Amendment Act 2013 (SA)
Family and Community Services Act 1972 (SA)
Freedom of Information Act 1991 (SA)
Work Health and Safety Act 2012 (SA)

Australian Capital Territory

Children and Young People Act 2008 (ACT) Disability Services Act 1991 (ACT)
Freedom of Information Act 1989 (ACT)
Work Health and Safety Act 2011 (ACT)
Working with Vulnerable People (Background Checking) Act 2011

Queensland

Child Protection Act 1999 (Qld)
Disability Services Act 2006 (Qld)
Information Privacy Act 2009 (Qld)
Right to Information Act 2009 (Qld)
Working with Children (Risk Management and Screening) Act 2000 (Qld)
Work Health and Safety Act 2011 (Qld)

Northern Territory

Care and Protection of Children Act 2007 (NT)
Children's Commissioner Act 2013 (NT)
Disability Services Amendment Act 2012 (NT)
Information Act 2002 (NT)
Medicines, Poisons and Therapeutic Goods Act 2012 (NT)
Work Health and Safety (National Uniform Legislation) Act 2011 (NT)

Tasmania

Children, Young Persons and their families Act 1997 (Tas)
Disability Services Act 2011 (Tas)
Personal Information Protection Act 2004 (Tas)
Poisons Act 1971 (Tas)
Registration to work with Vulnerable People Act 2013 (Tas)
Right to Information Act 2009 (Tas)
Work Health and Safety Act 2011 (Tas)

Western Australia

Occupational Safety and Health Act 1984 (WA)