

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 take calculated risks. When making decisions about services and supports, Aspect recognises and promotes these rights by 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 enhances each student / participant's 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 to enhance informed decision making and choice, and the involvement of family members and significant people as appropriate to assist 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 right of students and participants to privacy and confidentiality, freedom of movement and self-determination. 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 clients 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 restricted 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

Aspect is committed to its obligations under the National Standards for Disability Services, Standard 1: Rights; Standard 2: Participation and Inclusion; and Standard 3: Individual Outcomes which specifically acknowledge the promotion of individual rights, self-determination and expression; and the need for Aspect to collaborate with individuals, their families and other services to support participation and inclusion in areas of interest whilst engaging in safe, minimally restrictive, evidence-based transparent practices that actively prevent the risk of harm, neglect, abuse or violence.

The Policy also speaks to the Disability Standards for Education 2005 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 regarding the fairness and equity availability of accessible formats for information and access to individualised relevant supports and adjustments, to ensure educational services, schools, adjustments and supports are accessible to all, without discrimination. Furthermore it speaks to Part 8: Standards for Harassment and Victimization, which requires organisations to prohibit harassment, abuse or victimisation by a staff member to a student with disability, and requires that staff are trained in identifying and reporting suspected abuse, neglect, harassment and victimisation of students, and actively engage in the prevention of it in any circumstances as part of the educational environment.

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.

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.

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.

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

Legislation References

Children, Youth and Families Act 2005
Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2 (NSW)
Crimes Amendment (Protection of Children) Act 2014
Disability Act 2006 (VIC)
Disability Discrimination Act 1992 (Cth)
Disability Services Act (1993)
Disability Standards for Education 2005
Guardianship Act 1987 (2001) (NSW)
Guardianship and Administration Act 1986 (VIC)
Guardianship and Management of Property Act 1991 (ACT)
National Standards for Disability Services 2013
Occupational Health and Safety Act 2004
Work Health and Safety Act 2011 (NSW)
Work Health and Safety Act 2012 (SA)