

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 / 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 / circles of support 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 / circle of support to remove any identified barriers to service provision that may occur due to a student's/participant's choice's 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 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

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.
 - Part 8: Standards for Harassment and Victimisation.

- 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.

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

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)

Disability Standards for Education 2005 (Cth)
Work Health and Safety Act 2011 (Cth)

New South Wales

Poisons and Therapeutic Goods Act 1966 (NSW)
Guardianship Act 1987 (NSW)
Community Services (Complaints, Reviews and Monitoring) Act 1993 (NSW)
Work Health and Safety Act 2011 (NSW)

Victoria

Drugs, Poisons and Controlled Substances Act 1981 (VIC)
Guardianship and Administration Act 1986 (VIC)
Occupational Health and Safety Act 2004 (VIC)
Medical Treatment Planning and Decisions Act 2016 (VIC)

South Australia

Controlled Substances Act 1984 (SA)
Consent to Medical Treatment and Palliative Care Act 1995 (SA)
Work Health and Safety Act 2012 (SA)

Australian Capital Territory

Guardianship and Management of Property Act 1991 (ACT)
Work Health and Safety Act 2011 (ACT)