



POLICY/PROCEDURE: Duty of Care

Policy Statement

CatholicCare NT is funded to deliver direct care services to families and individuals within the community. Staff are employed to deliver these services and the organisation has a duty of care to anyone who is reasonably likely to be affected by our activities. CCNT has policies and procedures to guide practice. Managers and Team Leaders provide supervision as further support for staff to meet duty of care obligations.

Definition of Duty of Care

Duty of Care is your **legal duty** to take reasonable care to avoid others being harmed (this can include physical or emotional harm). Neglect of this duty is the basis for the civil court action of negligence. If you identify a reasonably likely risk of harm, you must take **reasonable care** when responding.

Definition of Reasonable Care

Reasonable care is the standard of care that a reasonable service provider would provide in that situation. Sometimes reasonable care is balanced against other competing responsibilities such as:

- the safety of other people (other clients, workers, yourself etc.)
- privacy and confidentiality
- the needs of clients e.g. recreation, socialisation, opportunities to develop skills, self-responsibility, decision-making

Each situation and each client will be different. Workers assess the situation and act accordingly. Factors to consider are:

- the risk of harm and the likelihood of the risk occurring
- the sorts of injuries that may occur and how serious they might be
- precautions that could be taken
- the usefulness of the particular activity which involves risk

CatholicCare NT policies and procedures, program guidelines and standards provided by funding bodies, all help the staff and ultimately the organisation to meet its duty of care obligations to their clients.

Essential Principles

All people have equal rights to take risks and CatholicCare NT assists clients to enjoy the broadest range of life opportunities and experiences in an environment of care, support, information, education and advocacy.

All people, regardless of conditions, impairments or disabilities, have innate value and should be treated with respect and dignity. They have the right to choose and be involved in decisions about their lives and to participate in all activities and consequences that impinge upon their lives.

Procedure

Duty of Care is a Balancing Act

Duty of care does not mean that you must prevent all possible harm. It is a balancing act, weighing up a range of issues before deciding what level of precaution is reasonable in the circumstances. You may have to weigh up a parent's right to discipline their children against whether they are harming their children, taking into consideration mandatory reporting requirements. Refer to CCNT Policy/Procedure: Child Protection (ORG/SP/P007).

1. Responsibilities

At all levels of the organisation, it is expected that staff provide a standard of care in line with their position. This aims to achieve the best outcome for each client while respecting the client's right to make choices.

1.1 Managers are:

- to ensure appropriate and sufficiently experienced and qualified staff are employed within each program
- to ensure all prospective employees are thoroughly screened and assessed, including criminal record checks and references
- to approve program specific procedures
- to inform the General Manager Programs/Director of any suspected serious breaches of Duty of Care
- to investigate and respond to any suspected breaches of Duty of Care
- to ensure all Team Leaders receive appropriate training on Duty of Care issues

1.2 Team Leaders are:

- to allocate available staff to best meet client needs
- to develop program specific guidelines in accordance with the client needs
- to ensure all program staff receive appropriate training, support and regular supervision
- to ensure client file documentation is maintained and contains relevant information
- to inform the Manager of any known or suspected breaches of Duty of Care

1.3 Staff are:

- to ensure clients are provided with adequate education and training in order to make informed decisions
- to inform the Team Leader of any controversies, conflicts or contentious consequences relating to a decision
- to maintain appropriate documentation on each client and keep documentation in accordance with program guidelines
- to inform the Team Leader or Manager of any actual, suspected or foreseeable breaches of Duty of Care

- to regularly inform the Team Leader on the development of client issues
- to provide an appropriate standard of care to clients in accordance with the employee's skill, competence and training

2. Application of the Principles of Duty of Care

2.1 Decision Making

CatholicCare NT staff are to encourage and assist all clients to make their own decisions by:

- identification and assessment of client issues
- developing a case plan, taking reasonable steps to reduce risk while achieving the best possible outcome for the client
- providing continuing support to assist the client achieve his/her goal
- providing continuing education about risks and risk minimisation
- documenting the decision making process and its implementation

2.2 Children and Young People

- when children are under the age of 16 years and living with their families, parents or caregivers have the right to make decisions in the best interests of the child
- staff will encourage the parent(s) or caregivers to make informed decisions for their child by following the decision-making steps above
- staff will encourage parents or caregivers to involve children and young people in the decision to the maximum extent possible, taking account of their age and developmental level

2.3 People with a Disability or who are Ageing

- all clients over the age of 16 years, including clients with a disability or who are ageing, have the right to make decisions for themselves, taking into account the steps outlined above
- parental or caregiver involvement in the decision making will vary according to the level of decision making ability of the client
- where clients over the age of 16 years have a legally appointed guardian or similar, the person responsible will have the right to make some or all of the decisions on the client's behalf

3. Breach of Duty of Care

Examples of breaches of Duty of Care include but are not limited to the following:

- failure to provide information that is within the boundaries of the staff member's role description, resulting in harm to the client
- failure to provide or arrange a necessary and available service resulting in harm to the client
- the standard of care required by a staff member's position (as set out in the Role Description and in the organisation/program policies and procedures or guidelines) is not provided and harm results
- an accident was reasonably foreseeable and the staff member failed to take reasonable steps to prevent the accident from occurring, including failure to take reasonable steps to prevent one client injuring another eg: allowing a victim and

perpetrator of domestic violence to meet without conducting a risk assessment and ensuring adequate controls were in place

- physical, sexual or emotional abuse of a client by a staff member occurs; refer to CCNT Policy/Procedure: Allegations of Misconduct (ORG/HR/P017).
- other illegal and exploitative activities, e.g. using a staff member's position to obtain financial gain from a client or defrauding a client
- failure to notify a Team Leader or Manager of suspected or known breaches
- failure of a Manager to notify the Director of suspected or known serious breaches of Duty of Care is, in itself, a breach of Duty of Care

4. If a Suspected or Known Breach of Duty of Care Occurs

Where possible and appropriate, reports of any suspected breach of duty of care should be resolved at a local level with a minimum of formal processes. Staff are to keep a record of any incident/s leading to a breach e.g. dates, times location, witnesses, person/s involved and details of the breach. Unless the matter is serious, a flexible approach is to be adopted when addressing reports and alternative courses of action. The Manager will immediately inform the General Manager Programs / Director if the breach is considered serious.

- 4.1 When a suspected or known breach occurs, the relevant Team Leader or Manager will be informed as soon as possible.
- 4.2 Investigations will be conducted by the Manager, Team Leader or other internal or external resources as identified by the Manager, taking into consideration the seriousness of the breach.
- 4.3 The breach will be investigated by interviewing relevant personnel, including the staff member suspected of the breach, in order to gather factual information.
- 4.4 A plan will be developed for responding to the breach, ensuring that the client is provided with any necessary and available services and assistance. In less serious cases, this may involve further training for the staff member.
- 4.5 The client's parent(s) or guardian, if appropriate, is informed of the incident and offered counselling and support.
- 4.6 If the incident is thought to be a criminal matter, it will immediately be referred to the Police for their investigation.
- 4.7 If appropriate, disciplinary proceedings will be applied and may involve a reprimand, warning or dismissal. Refer CCNT Policy/Procedure: Staff Disciplinary Proceedings (ORG/HR/P018).
- 4.8 The client is entitled to receive any ongoing and available services from the organisation and will not be in any way disadvantaged as a result of the breach of Duty of Care.
- 4.9 Program policies and procedures will be reviewed in light of the incident to determine whether changes can be made to prevent similar breaches from occurring.
- 4.10 If a breach of Duty of Care is suspected but not substantiated, then the situation will be discussed with the staff concerned and additional monitoring and accountability mechanisms may be instituted.

5. Safety of Parties

- 5.1 Where Management deems that immediate separation action (reallocation to another role or stepping aside) be taken to protect the interests of a client, staff member or the staff member suspected of involvement in the breach of duty of care, the Manager must advise the Director. (Refer to Section 7, Allegations of Misconduct).
- 5.2 The Director will have responsibility to approve relocation or ask a staff member to step aside from their duties pending an investigation. Direction for relocation or stepping aside will be put to the staff member concerned in writing, signed by the Director. The written document will advise the staff member of the reason(s) for the relocation and the processes for any investigation procedure. Staff who are relocated, or asked to step aside from primary duties pending investigation, will remain on full pay and employment conditions during the period of investigation. The Manager has responsibility for advising the staff member, of whom a breach of duty of care is alleged, of his/her right to seek external support.

References

Legislation

- NT Work Health and Safety (National Uniform Legislation) Act 2011
- NT Care and Protection of Children Act 2012 (2007)
- Age Discrimination Act 2004
- Racial Discrimination Act 1975
- Domestic and Family Violence Amendment Act 2009
- Information Act 2002
- Federal Privacy 1988
- Disability Services Act 2012

Associated Documents

This document should be read in conjunction with these forms and procedures:

- CCNT Policy/Procedure: Introduction to WHS (ORG/WHS/P001)
- CCNT Policy/Procedure: Organisational Policy (ORG/WHS/P002)
- CCNT Policy/Procedure: Child Protection (ORG/SP/P007)
- CCNT Policy/Procedure: Code of Conduct (ORG/HR/G001)
- CCNT Policy/Procedure: Allegations of Misconduct (ORG/HR/P017)
- CCNT Policy/Procedure: Staff Disciplinary Proceedings (ORG/HR/P018)
- CCNT Organisation Form: SP Client Risk Management (ORG/SP/F005)
- CCNT Organisation Form: SP Welcome to CatholicCare NT (ORG/SP/F001)

Links

NT Work Health and Safety (National Uniform Legislation) Act 2011

http://www.austlii.edu.au/au/legis/nt/num_act/whasula201139o2011543/

NT Care and Protection of Children Act 2012 (2007)

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<http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/bab d941b1e14838a69257ae7007ee21d?OpenDocument>

Age Discrimination Act 2004

http://www.austlii.edu.au/au/legis/cth/consol_act/ada2004174/

Racial Discrimination Act 1975

http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/

Domestic and Family Violence Amendment Act 2009

http://www.austlii.edu.au/au/legis/nt/num_act/dafvaa20092o2009380/

Information Act 2002

<http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/bab d941b1e14838a69257ae7007ee21d?OpenDocument>.

Federal Privacy 1988

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/

Disability Services Act 2012

http://www.austlii.edu.au/au/legis/nt/consol_act/dsa213/