



Policy C-06

Duty of Care, Decision Making & Choice

1.0 Policy

The Disability Trust recognises its responsibility to ensure that service users are not unreasonably exposed to physical harm, abuse or exploitation. At the same time The Trust is committed to supporting service users to develop independence and autonomy. The Disability Trust affirms that people with disabilities accessing services must have the opportunity to participate as fully as possible in choices about the events and activities of their daily life.

Client involvement in important decisions is considered in light of The Trust's obligations with respect to duty of care. The age-appropriateness of client involvement in decision making and choice is also considered in each case.

2.0 Purpose

- 2.1 This policy defines how The Disability Trust considers creating a balance between a client's right to choose to take a calculated risk and the organisation's requirement to take reasonable steps to ensure that clients are protected from harm.

3.0 Responsibilities

- 3.1 All staff are required to consider on a case by case basis how a client's dignity of risk will be balanced with the organisation's legal duties and responsibilities to take reasonable care. Staff are required to document consideration of these risks.
- 3.2 Management are responsible for training staff in Duty of Care and Dignity of Risk.
- 3.3 Management are responsible for complex determinations in relation to achieving a correct balance between Duty of Care and Dignity of Risk at an individual level.

4.0 Definitions

- 4.1 *Duty of Care:* Duty of Care is an obligation imposed on individuals and companies performing a service or delivering a product, to act in ways that are reasonable with respect to the standards of the industry. In particular failure to take reasonable steps to prevent harm or loss to another person arising from such actions is considered a breach of Duty of Care.
- 4.2 *Negligence:* Negligence occurs when there has been a breach of Duty of Care that results in actual harm or loss to another person. Negligence is a legal term for "fault" for which there may be recourse through the courts.
- 4.3 *Dignity of Risk:* Dignity of Risk refers to a person's right to make an informed choice to experience life and take advantage of opportunities for learning, developing competencies and independence and, in doing so, take a calculated risk.

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5.0 Requirements

Duty of Care

- 5.1 Duty of care places an obligation on The Disability Trust to provide services in ways that minimise the foreseeable risk to clients. In fulfilling their duty of care staff do whatever is reasonable to avoid foreseeable injury to service users by considering what is known about the person's skills and experiences which relate to a particular activity.
- 5.2 The Disability Trust provides mandatory training in Duty of Care and Dignity of Risk for all direct care staff as part of the annual training calendar. This includes training in relation to Guardianship, capacity and consent.
- 5.3 Staff develop opportunities that allow service users to confront manageable risks safely with support and, if required, formal training programs. When issues of duty of care arise, staff consult with co-workers and supervisors whilst maintaining due regard to the dignity and privacy of service users.
- 5.4 The Trust checks that businesses providing activities and services for clients e.g. training courses, tutors, hairdressers, beauticians, gyms and holiday programs, are registered with appropriate bodies and/or are held in good esteem in their local community. This duty extends only to clients with higher support needs who are unable to independently use community facilities or make informed choices.
- 5.5 Where a client chooses to undertake an activity that could result in harm, the staff members documents the steps taken to determine capacity for consent, the level of risks involved and mechanisms to demonstrate consideration of their duty of care.
- 5.6 It is recognised that not all client decision making should be supported or acted on at a service level. Where the level of disability, communication skills, or age of a client is reasonably considered to impede their understanding of the impact of a decision, which might potentially lead to personal risk or a risk to others, The Trust gives priority to consideration of duty of care.
- 5.7 The Disability Trust may also consider a client's decision in relation to the potential impact on other staff and clients in particular in relation to requirements to provide a safe working environment for staff or others. ([See Policy H-01-Commitment to WH&S](#)).
- 5.8 In placing clients in a workplace in open employment The Trust fulfils its duty of care by:
- Matching the employee's skills and abilities to the requirements of the job.
 - Ensuring that the employee has access to training necessary for the safe performance of the duties of the position.
 - Ensuring that the workplace has in place a WH&S policy and risk management strategies.
 - Ensuring that the position involves appropriate wages and conditions.

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- 5.9 In supported employment The Trust fulfils its duty of care by:
- Matching the employee's skills and abilities to the requirements of the job.
 - Providing training necessary for the safe performance of the duties of the position.
 - Implementing WH&S policy and risk management strategies.
 - Ensuring that an approved wages system is implemented and that the conditions of employment are consistent an appropriate award.

Decision Making and Choice

- 5.10 Plain English versions or pictorially supported versions of the Duty of Care, Decision Making and Choice policy are available for people with intellectual disabilities. (See Plain English Policy: Making Decisions and Expressing Choices).
- 5.11 The Disability Trust affirms the rights of clients to participate in an age-appropriate manner in decisions affecting the services they receive and in making choices in relation to the activities of their daily life. The Trust's services endeavor to support clients in the development and use of independence and self-advocacy skills.
- 5.12 The Trust provides opportunities for clients to participate in decision making in relation to the operations of the service and the individual service that they receive. (See [Policy C-08 Person Centred Practice & Meeting Individual Needs](#) and [Policy C-10 Supporting Participation in Service Management](#)).
- 5.13 Involvement in decision making is consistent with the age of the service users (child or adult) and his/her level of understanding. Opportunities for decision making may include but are not limited to:
- Expression of individual choice on a daily basis with respect to activities, meals and outings. (See [Policy C-09 Supporting Inclusion & Participation in Community Life](#)).
 - Expression of individual choices in Individual Service Plans or Employment Assistance Plans (See [Policy C-08 Person Centred Practice & Meeting Individual Needs](#)).
 - Participation in Client Committees.
 - Participation in Service Advisory Groups.
 - Participation in service planning and review processes.
 - Participation in policy development or review.
- 5.14 Services provide age-appropriate opportunities for service users to participate in community activities and to develop relationships with people outside the service. In community access services clients are given choice and options in their programs.
- 5.15 The Trust promotes and supports decision making through individual programs which offer opportunities for developing skills in choice making. A focus on communication skills and development of communication alternatives assists individuals in the better expression of their choices. (See [Policy C-07 Supporting Communication](#)).

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- 5.16 Where appropriate services offer opportunities for clients to try various activities in order that each person is able to make informed choices about the areas that they wish to pursue.
- 5.17 For clients with a physical disability accessing attendant care, personal care or in-home respite programs, The Trust does not impede clients in directing the work of their personal care staff providing that such direction does not lead to a breach of WH&S requirements or a breach of other policies of the organisation.
- 5.18 Choices and preferences are taken into account in the individual planning process. Clients who are unable to participate in their individual program planning have the opportunity to be represented by a family member or advocate.
- 5.19 Clients are always asked whether they wish to participate in an activity or program. No person is required to participate in an activity that they choose not to.

Family and Guardianship Involvement

- 5.20 The Disability Trust recognises the importance of alternate decision making processes for people unable to effectively communicate their wishes or give informed consent to matters affecting their care. The Trust recognises and values the input of families and advocates into providing quality services and supports their involvement in decision making around care issues.
- 5.21 The Trust recognises the legal status of the “person responsible” who is able to provide informed consent on behalf of the client in relation to minor and major medical and dental treatments.
- 5.22 The Trust recognises that all other matters should be discussed with families where a decision impacts on the type of service to be received by the person with a disability.
- 5.23 Staff are trained to recognise where consent through the Guardianship tribunal is required in relation to decision making and in these instances should refer issues to management for consideration of a Guardianship application by the service.
- 5.24 Staff are required to refer to management any decision made by the person responsible or the family that they believe jeopardises the rights or independence of the client. Management will consider application to the Guardianship Tribunal seeking a guardian to be appointed if there is a potential for a serious adverse impact on the client.

Use of Advocates

- 5.25 The Trust recognises and values the input of advocates into providing quality services and supports their involvement in decision making around care issues.
- 5.26 Where individuals are unable to advocate on their own behalf, Trust services encourage and support the use of advocates. ([See Policy C-11 Human Rights & Advocacy](#))

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- 5.27 Where a consumer does not have an advocate they are provided with information about advocacy services and supported to obtain one if they choose to.
- 5.28 The use of an advocate is particularly encouraged in situations where clients with an intellectual disability or communication difficulties are involved in any of the following:
- A complaint about the quality of service, a staff member, service access or any other issue regarding service delivery
 - Exit from the service where it is not as a result of client choice
 - Disagreements between client and family or service provider as to the best way of meeting individual consumer needs
- 5.29 Where a client is able to give consent to the involvement of an advocate such consent must be sought and obtained. Under these circumstances client confidential information is only be provided to an advocate with the consent of the client. Where possible the client is encouraged to be present at discussions between the service and their advocate.
- 5.30 The Trust may discuss with an advocate any decisions that impacts on the type of service to be received by the person with a disability.

6.0 Forms and Records

Record Client File Notes of key client decisions
 TP-C-08-01 [Individual Plan](#)

7.0 Work Instructions and Safe Working Procedures

Nil

8.0 Related Policies

C-07 [Supporting Communication](#)
 C-08 [Person Centred Practice & Meeting Individual Needs](#)
 C-09 [Supporting Inclusion & Participation in Community Life](#)
 C-10 [Supporting Participation in Service Management](#)
 C-11 [Human Rights & Advocacy](#)
 F-10 [Employee Code of Conduct](#)
 H-01 [Commitment to OH&S](#)
 I-14 [Risk Management](#)

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9.0 Related Documents

Plain English Policy: Making Decisions and Expressing Choices

Brochure: Your Rights in Receiving Services

Staff Induction Manual

Volunteer Induction Manual

10.0 References

NSW Guardianship Act, 1987

ADHC Policy: Decision Making and Consent policy and procedures 2006

NSW Disability Services Act and NSW Disability Service Standards

Commonwealth Disability Services Act and Disability Service Standards

Standards in Action NSW Ageing and Disability Department 2011

UN Convention on the Rights of Persons with Disabilities (2008)

ADHC Manual Decision Making Policy and Procedures (2009)

- Attachment 1 Decision Making Flowchart
- Attachment 2 Guardianship Tribunal Consent Form
- Attachment 3 Office of the Public Guardian Consent Form