

# DUTY OF CARE, DIGNITY OF RISK AND THE LEAST RESTRICTIVE ALTERNATIVE POLICY OPERATIONAL POLICY



<b>POLICY TITLE:</b>	<b>DUTY OF CARE, DIGNITY OF RISK AND THE LEAST RESTRICTIVE ALTERNATIVE POLICY</b>		
<b>VERSION:</b>	002	<b>DATE EFFECTIVE:</b>	11/03/2016
<b>AUTHORISED BY:</b>	Chief Executive Officer	<b>DATE REVIEWED:</b>	26/09/2022

## PURPOSE

This document aims to inform Staff members and Participants about the concepts of Duty of Care, Dignity of Risk and the Least Restrictive Alternative. It provides examples and guidance in dealing with these issues and making informed decisions. It is accepted by ARC Disability Services Inc. (ARC) that Participants have the right to be informed about risks and an equal right to take risks. However, if there is a Duty of Care issue in direct conflict with a workplace Health and Safety issue, the Workplace Health and Safety Legislation will take precedence.

## SCOPE

This policy applies to all employees, volunteers and participants who access or deliver ARC services.

## IMPLEMENTATION

### WHAT IS “DUTY OF CARE”?

A duty of care exists when someone’s actions could reasonably be expected to affect other people.

It means being in a position where someone else is relying on you to be careful and where, if you are not careful, it is reasonably predictable that the other person might suffer some harm.

Difficulties arise because sometimes the line between where your responsibilities start and finish may be difficult to define!

### WHO HAS A DUTY OF CARE?

*Some examples:*

A driver of a car has a duty of care to other passengers in the car, and to other drivers and pedestrians on the road.

A doctor has a duty of care to their patients.

A parent has a duty of care to their child.

A person providing care or support to a person with a disability has a duty of care to that person.

### WHEN DO YOU HAVE A DUTY OF CARE?

Duty of care is not all or nothing. You need to be clear about exactly what the nature of the support is that you are providing, and on which the person is relying.

For example - A doctor has a duty of care to their patient in relation to their health, but not to the stability of their homes.

An employment service has a responsibility in relation to employment issues, but not in relation to housing issues.

You need to be sure that you do not start intervening in aspects of the person’s life for which you are not responsible.

## STANDARD OF CARE

The standard to which any given activity must be performed to meet the duty of care is the standard *that a reasonable person would try to meet.*

This reasonable standard is not perfection.

It is what would be expected of a reasonable person *in your shoes!*

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*E.g. A paid staff member in a service is expected to have a certain degree of skill and expertise which an unpaid or volunteer worker would not be expected to have (this doesn't mean that they are "let off the hook", just that the responsibility will be different).*

## DIGNITY OF RISK

Every individual has the right to lead their life in the mainstream of the community and to experience life conditions as good as these of the "average" citizen.

## LEAST RESTRICTIVE ALTERNATIVE

The Least Restrictive Alternative can be defined as a system or option that causes the least disruption to a person and maximises their independence and freedom.

## DUTY OF CARE AND DIGNITY OF RISK

Duty of care must be balanced with dignity of risk, that is, the right of informed individuals to take calculated risks. Everyone has a right to an assumption of competence. Informed decision making involves a general awareness of the consequences of the decision and the decision is made voluntarily and without coercion.

The factors to be considered in situations of potential harm are:

- the risk and likelihood of harm
- the sorts of injuries that could occur and an assessment of the seriousness of those injuries
- precautions that could be taken to minimise the risk of harm or seriousness of the injury
- the usefulness of the activity involving risk
- Current professional standards about the issues.

Avoiding harm or injury involves:

- Determining when harm or injury is foreseeable
- Taking account of the seriousness of the potential harm or injury
- Assessing risks from the other person's perspective
- Recognising that some risks are reasonable
- Not actively harming or injuring the other person
- Avoiding discrimination and overly restrictive options
- Avoiding compromises to the rights of others
- Noticing risks that the person alerts you to
- Recognising when people are at risk of injury from others
- Supporting people to confront risks safely
- Safeguarding others from harm or injury
- Maintaining confidentiality Duty of care will be greatest to those who are relying on the worker the most.

## DUTY OF CARE IN RELATION TO ARC DISABILITY SERVICES INC.

ARC holds a responsibility to provide a duty of care to all participants. This is regarded as meaning:

- taking care at all times;
- using common sense at all times;
- being responsible and sensible at all times;
- operating in a way that is enabling and empowering for all people;
- owing every individual equal opportunity to reasonable levels of care.

All workers, volunteers and contractors involved in participant care will at all times provide a standard of care that is reasonable and consistent with the policies and procedures of ARC.

In providing support, workers and volunteers will not carry out tasks which require qualifications or training that they do not have.

Workers and volunteers will promptly report concerns about the safety of participants (including environmental hazards) to the Coordinator or Manager so that appropriate action can be taken.

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Participants will be encouraged to make their own decisions, independently or with the support of an advocate regarding their support at all times. This may require the support of other significant people (e.g. family or friends) on an informal basis or more formally through an official Guardian.

## STAFF HAVE A RESPONSIBILITY TO UPHOLD AND SAFEGUARD SERVICE USERS RIGHTS BY:

- Providing information to assist Participants to make informed decisions.
- Involving appropriate others in decision making.
- Being aware of the risks of harm, seriousness of harm, and appropriate actions.
- Understanding authority and limitations of Staff to make a decision.
- Providing opportunities for Participants to make decisions
- Assisting Participants to broaden their range of experiences
- Assisting Participants to develop self esteem
- Understand and support current standards and practices.
- Attending suitable training relating to duty of care.
- Reading, understanding and signing the ARC Employee Code of Conduct.

## CHECKLIST TO THINK ABOUT WHEN CONSIDERING YOUR “DUTY OF CARE”

- Would my actions, or lack of action, be likely to affect the Participant?
- To what extent would the Participant be affected
- Do others also have a responsibility to the Participant?
- What would another reasonable person do in my place?
- If injury is foreseeable, could I take any actions, which would minimise this injury?
- What can I do to support the Participant to make their own decision?
- If the Participant is unable to make their own decisions, to what degree are their rights affected if the wrong decision is made?
- Do I know which rights & aspirations are likely to be the most important ones for this Participant, in this situation?
- What access to advocacy does the Participant need to have?

## REFERENCES

*NDIS Quality and Safeguards Framework*  
*Law of Negligence and Limitation of Liability Act 2008*

## AUTHORISATION

This Policy is approved and issued by:

**BENJAMIN KEAST**

Chief Executive Officer

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