



Duty of Care and Dignity of Risk

WHAT IS DUTY OF CARE?

Duty of care is a legal obligation we have to take **reasonable steps** to prevent another person or people coming to **foreseeable harm**.

In aged care, duty of care means that the support provider should think about what could go wrong in implementing the support plan (i.e. risk), identify what steps are needed to minimise the chances that harm will occur (i.e. risk management) and then make sure risk management strategies are included in the client support plan.

Duty of care includes:

- both an action taken and a failure to act
 - advice given and not given

What are “reasonable” steps simply means what would a reasonable person do in this situation. Reasonable steps vary according to a staff member’s position. What is expected of a volunteer will be different to what is expected of a paid support or care worker.

WHAT IS NEGLIGENCE?

Negligence can happen when conduct falls below established standards protecting others against risk of harm. A person can be considered to have acted negligently if what they did or said was different from that expected of a reasonable person acting under similar circumstances and that this negligent conduct caused some form of harm. Harm can be physical, emotional or financial.

WHAT IS DIGNITY OF RISK?

Clients have a right to undertake some tasks that have a level of risk. This is called dignity of risk. Taking a calculated risk involves the client:

- understanding their available options and the potential consequences

- making an informed choice based on this understanding
- experiencing life as it is and learning by sometimes succeeding and sometimes failing.

WHAT IS CAPACITY?

The client’s capacity is very important to their dignity of risk. Capacity is about the client’s ability to understand the facts involved and make an informed decision. Capacity is not about the decision the client makes. Unless otherwise formally decided by a medical or legal practitioner, the law assumes every person has capacity.

Capacity is decision specific. A person may have capacity to make decisions about health, for example, but not major financial decisions. Capacity varies with factors like physical and mental health, the environment, personal strengths. Capacity can be increased or regained in some situations.

DETERMINING CAPACITY

There are four key questions that laypeople can use to decide whether capacity may be an issue and capacity assessment is needed. Is the person in question able to:

1. Understand the information relevant to the decision, the options available and their potential consequences?
2. Keep this information long enough to make the decision?
3. Use or weigh this information to arrive at a choice?
4. Communicate the decision in some way?

Putting it Together

