

Duty of Care and Dignity of Risk Policy

1. Purpose

Inala Community House (ICH) National Disability Insurance Scheme (NDIS) seeks to provide safe and high-quality services that support the duty of care owed to participants and promotes their decision making.

ICH NDIS recognises that when duty of care and dignity of risk is balanced, it promotes positive risk-taking for participants which:

- Improves autonomy, social interaction and health
- Supports independent living and self-determination
- Enables a person-centric approach

2. Scope

This policy applies to all ICH NDIS representatives including key management personnel, Directors, full time workers, part time workers, casual workers, contractors, volunteers and students. For the purpose of this policy, these persons shall be referred to as workers.

3. Definitions

Duty of care: is a legal obligation to take reasonable care for a participant who is being supported, to not cause harm to another person, when that harm could be reasonably foreseen.

Dignity of risk: means promoting a participants autonomy and self-determination through decision making, and respecting their decisions even where this may not be the recommended option.

4. Policy

Workers must use their judgement to balance their legal duty of care to ensure a participant's safety and wellbeing is maintained while also ensuring their right to live an autonomous and self-determining life is supported.

When duty of care and dignity of risk is not appropriately balanced it can have negative impacts on both the participant and workers. The participant may feel patronised, over protected and a loss of dignity. It is important that workers understand and take appropriate actions to ensure they fulfil their duty of care and support participant's right to dignity of risk as failure to do so can result in a claim of negligence.

ICH NDIS will ensure that workers have the necessary qualifications, experience and understanding to navigate duty of care obligations and dignity of risk decisions. This may be achieved through:

- Training and education
- Consultation with participants and their support networks to understand their personal goals, values and boundaries
- Providing supervision and ongoing support to workers

4.1 Duty of Care

ICH NDIS is responsible for ensuring that the standard of care being provided, supports individual participants to live their lives in a way that is as meaningful and independent as possible. However, it also means taking necessary caution and proactive measures when certain risks present in everyday life for the participants being supported.

When a situation, choice or activity arises where duty of care and dignity of risk need to be considered, consideration of factors should include the:

- Participant's previous experience in similar situations
- Participant's desires, opinions, goals, values and knowledge
- Context in which the decision is being made
- Possible outcomes and extent of harm to the participant and others if the participant does pursue the choice

If there is a reasonable and foreseeable chance of significant harm to the participant or others, then it is ICH NDIS's legal responsibility to act with a duty of care. This may include:

- Discussing the potential outcomes with the participant and ways they may be able to protect themselves or others
- Adjusting the environment or activity to eliminate potentially harmful outcomes
- Assisting in the action or activity where the risk or hazard is likely to occur
- As a last alternative, stopping or postponing the activity

If there are no reasonable adjustments or assistance that can be offered, it may be necessary to intervene or stop the choice or activity. If this occurs, the worker will discuss the decision with the participant and explain why that decision has been made and ways it may be navigated in future.

4.2 Dignity of Risk

While ICH NDIS are responsible for maintaining a duty of care, it is also a responsibility to allow participants to take risks as part of supporting their autonomy and self-determination. All adults, including participants, have the right to learn from experience even if the outcomes may pose a potential risk.

Any decision a participant makes will be supported as far as practicable, whilst maintaining a duty of care.

Any dignity of risk decision made by a participant will not provide the basis for service withdrawal or denial.

4.3 Breach of Duty of Care

A breach of duty of care is a failure to meet the relevant standard of care. This means that a worker either does something that has put the participant at risk and has resulted in foreseeable harm, or they did not act to protect the participant when there was reasonable expectation or foreseeable risk that it would result in harm. This is known as negligence.

If a worker or another organisation is suspected of having breached its duty of care obligations or a participant's right to the dignity of risk, ICH NDIS will promptly investigate. Where an ICH NDIS worker is involved and depending on the outcome of the investigation, this may result in disciplinary action up to and including termination of employment.

If a worker or organisation is found to be negligent, this may result in civil legal action.

4.4 Responsibilities

The Manager is responsible for ensuring that:

- Workers have relevant knowledge, skills and experience
- Appropriate training and education is provided to workers
- Worker are provided with adequate support and supervision
- All service delivery processes in place uphold the rights of participants
- Service provision is not affected due to a dignity of risk choice
- Allegations of duty of care or dignity of risk breaches are appropriately investigated

Workers are responsible for ensuring that they:

- Provide information about options and risks to participants
- Appropriately balance duty of care obligations with participant's right to dignity of risk, taking appropriate steps to ensure the safety of the participant and other people

5. Review

This policy remains in effect unless otherwise determined by resolution of the Board of Directors.

This policy will be reviewed every three years or sooner as required.

6. Related Documents

Policies

ICH Service User Support Policy
NDIS Decision Making and Consent Policy
NDIS Participants Rights Policy