

# DUTY OF CARE

## POLICY AND PROCEDURE

### Policy Statement

'**Duty of care**' is a legal concept that was developed by the courts through their decisions. It refers to an obligation to take reasonable care to protect another from all reasonably foreseeable risk of harm. The greater the risk of harm, and the more serious the possible harm, the higher the standard of care owed.

### Definitions

**Foreseeable risk of harm** is the likelihood of injury or damage that a reasonable person should be able to anticipate in a given set of circumstances.

**Standard of care** refers to the reasonable degree of *care* a person should provide to another person.

**Negligence:** The failure to use reasonable care, resulting in damage or injury to another.

**Reasonable Person:** A hypothetical individual who exercises average care, skill, and judgment in conduct and represents a community standard.

**Informed Choice:** A decision by a competent individual, who has received the necessary information, who has adequately deliberated and weighed the options, and who has arrived at a decision freely and voluntarily.

### Procedure

- You have an obligation to avoid acts or omissions, which could be reasonably foreseen to injure or harm other people. That means that when you are engaged by Mypower Foundations you have a duty of care to clients, client's families, other staff, contractors, the Director and yourself.
- You must aim to provide high quality care to the best of your ability and say if there are any reasons why you may be unable to do so.
- Always act in the best interest of individuals and others that you owe a duty of care to and not act or fail to act in a way that results in harm.
- Sometimes contractors or the Director may feel that there is a conflict between their duty of care and the wishes of the client using the service. Best

interest decisions can only be made for clients who cannot decide matters for themselves at the time a particular decision needs to be taken, whether that is due to their age or disability. Where there is any potential duty of care dilemmas, clear documentation of decisions made and the reasons for those decisions must be recorded.

- Mypower Foundations aims to supporting people to make informed choices. Clear communication with clients and their families is crucial to ensure that they understand the implications of any decisions or actions.
- Most of the choices that people make in life naturally involve some element of risk, and the decisions made by people using health and social care are no different. Avoiding risks altogether would constrain their choices and opportunities. Risk is a concept that tends to have negative connotations, but people take considered risks all of the time and gain many positive benefits. Contractors need to consider the impact of taking risks.
- You cannot assume that a person cannot make their own decisions simply because of their condition.
- Discuss your concerns with the client and explain your concerns. If the risk seems great, you could discuss the matter with others involved in their support such as families, other contractors who support that client or the client's facilitator.
- Contractors and staff are encouraged to openly discuss and seek guidance on duty of care dilemmas they face. Diligence should be taken to ensure all workers always act in the best interest of the clients and seek guidance when in doubt.

## **Responsibility**

It is the responsibility of all contractors and the Director to consider the welfare of others, balanced with the impact of taking risks by others such as clients, client's families, other contractors, the Director and themselves.

Everyone has a duty of care, a responsibility, to make sure that they and other people are safe at the worksite whether that be in a home, in a vehicle or out in the community.

## **Relevant Legislation and Policies**

- Privacy Act 1988
- Civil Liability Act 2002 (NSW)
- Work Health and Safety Act 2011
- Guardianship Act 1987 (NSW)
- Mental Health Act 2007 (NSW)
- NSW Disability Services Standards

- National Standards for Disability Services
- Disability Discrimination Act 1992
- National Disability Insurance Scheme Act 2013
- NDIS Code of Conduct
- NDIS Quality and Safeguarding Framework
- Universal Declaration of Human Rights
- United Nations Convention on The Rights of Persons with Disabilities