

## DUTY OF CARE AND DIGNITY OF RISK

Aspect ensures that staff understand and implement the principles of duty of care and dignity of risk, recognising the rights of the people we support to make informed choices, and exercise choice and control over their lives, including taking calculated risks. When making decisions about services and supports, Aspect recognises and promotes these rights by promoting and supporting the contribution to decision making by students/participants, their family members, persons responsible, guardians and advocates. This ensures that students/participants have the opportunity to participate as fully as possible in the services they use as an expression of their autonomy and right of self-determination; and acknowledges their valued status in the community.

It is essential that each individual's dignity of risk is respected and supported in their decision-making processes. Aspect facilitates each student's/participant's meaningful choice and control to maximise their independence; and minimises the risk to the individual or others wherever possible. This includes:

- providing students/participants with information in a format that facilitates understanding where required. This is to enhance informed decision-making and support the choice between the risks and benefits of the options being considered;
- providing sufficient time for students/participants and their families/support network to consider, review and seek advice about their options in all stages of accessing, receiving and exiting service provision;
- working with the student/participant and their family/support network to remove any identified barriers to service provision that may occur due to a student's/participant's choices and their associated risk;
- maintaining safe environments for service provision, including ensuring the use of risk management and quality management processes to maintain, monitor and review how and where we provide our services as required; and
- facilitating the involvement of family members, advocates and significant people as appropriate and consented to, for assistance with decisions and choices that suit the individual's development and maintenance of their personal, gender, sexual, cultural, religious and spiritual identity.

Aspect promotes ethical, respectful and safe service delivery which meets legislative requirements, as a minimum, and achieves positive outcomes for people we support in accordance with human rights principles and conventions, and relevant State and national legislation. Aspect recognises the duty of care it owes to students and participants to take reasonable care to protect their safety and wellbeing. However, this does not override the rights of students/participants, and all staff will respect their rights to privacy and confidentiality, freedom of movement, autonomy, self-determination, intimacy in relationships and sexual expression. The relevant Aspect procedures and [Code of Conduct](#) guide the

decision making of Aspect staff in relation to this policy and are applied to manage any negligence, breach or failure of duty care.

Aspect staff have a legal duty to take action to address challenging behaviours that are harmful to students/participants or to others, but this does not permit them to do anything unlawful such as wrongful imprisonment, assault, or use of a prohibited practice, which includes inappropriate application of a restrictive practice.

Activities both at Aspect services/schools and in the community are aligned with an individual's learning outcomes, personal goals or aspirations. Aspect encourages and supports students/participants to make the most of opportunities and activities in their local community and in the wider community. Participating in activities in the community provides participants and students with opportunities to:

- join in activities and programs in their local community;
- learn and practice new skills, including generalising and transferring skills across environments;
- be independent and self-reliant;
- establish maintain social relationships;
- take responsibility for choices and decisions they make.

## External Framework

The Duty of Care and Dignity of Risk policy illustrates Aspect's adherence to the:

- NDIS Practice Standards (2018) and NDIS Code of Conduct, specifically within the NDIS Practice Standards and Quality Indicators:
  - Core Module: 1. Rights and Responsibilities, under all Outcomes.
  - Core Module: 2. Provider Governance and Operational Management, under the relevant Outcomes.
  - Core Module: 3. Provision of Supports, under all Outcomes.
  - Core Module: 4. Support Provision Environment, under all Outcomes.
  - Supplementary Module: 2. Specialist Behaviour Support Module, under all Outcomes.
  - Supplementary Module: 2a. Implementing Behaviour Support Plans, under all Outcomes.
  - Supplementary Module: 3. Early Childhood Supports, under all Outcomes.
  - Supplementary Module: 4. Specialist Support Coordination, under all Outcomes.
- Disability Standards for Education (2005), specifically:



- Part 3: Making Reasonable Adjustments;
- Part 5: Standards for Participation;
- Part 6: Standards for Curriculum Development, Accreditation and Delivery;
- Part 7: Standards for Student Support Services; and
- Part 8: Standards for Harassment and Victimisation.
- NESA Registered and Accredited Individual Non-Government Schools (NSW Manual), specifically:
  - 3. Requirements for Registered Non-government Schools, under requirements for Curriculum; and Safe and Supportive Environments.
- Standards for Registration and Review of Registration of Schools in South Australia, specifically the relevant quality related criteria for:
  - Standard 2 Student Learning and Assessment
  - Standard 3 Student Safety, Health and Welfare
- Australian Human Rights Commission's National Principles for Child Safe Organisations specifically:
  - 1. Child safety and wellbeing is embedded in organisational leadership, governance and culture;
  - 2. Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.
  - 3. Families and communities are informed and involved in promoting child safety and wellbeing.
  - 4. Equity is upheld and diverse needs respected in policy and practice.
  - 5. People working with children and young people are suitable and supported to reflect child safety and wellbeing values in practice.
  - 6. Processes to respond to complaints and concerns are child focused.
  - 7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.
  - 8. Physical and online environments promote safety and wellbeing while minimising the opportunity for children and young people to be harmed.
  - 9. Implementation of the national child safe principles is regularly reviewed and improved.
  - 10. Policies and procedures document how the organisation is safe for children and young people.



## Critical Definition

**Dignity of Risk** – promotes each person's autonomy and self-determination to make their own choices, including the choice to take some risks in life. All people are entitled to experience and learn from life situations and may choose to assume some risk in doing so.

**Duty of Care** – is the obligation that exists in certain relationships, such as between a service provider and a client, to take reasonable care to protect a person's safety and well-being.

**Negligence** – is the failure to exercise reasonable care to protect the safety and well-being of a person to whom a legal duty of care is owed. It is the basis for a civil claim for damages for harm caused as a result of any breach of duty of care.

**Self-determination** – refers to the right of individuals to make choices and decisions about their own lives. It reflects a core belief that people who use Aspect services can pursue meaningful outcomes and exercise control over their lives with respect to the services they are being provided.

**Wrongful imprisonment** – is deliberately confining a person to a particular place without lawful justification.

## Legislation References

### International

United Nations Convention on the Rights of Persons with Disabilities  
United Nations Convention on the Rights of the Child 1989  
Universal Declaration of Human Rights 1948

### National

Age Discrimination Act 2004 (Cth)  
Australian Education Act 2013 (Cth)  
Australian Human Rights Commission Act 1986 (Cth)  
Carer Recognition Act 2010 (Cth)  
Disability Discrimination Act 1992 (Cth)  
Disability Standards for Education Act, 2005 (Cth)  
National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and other measures) Bill 2017 (Cth)  
Privacy Act 1988 (Cth)  
Privacy Amendment Act (Private Sector) Act 2000 (Cth)  
Racial Discrimination Act 1975 (Cth)  
Sex Discrimination Act 1984 (Cth)  
Workplace Gender Equality Act 2012 (Cth)  
New South Wales  
Anti-Discrimination Act 1977 (NSW)  
Disability Inclusion Act 2014 (NSW)  
Education Act 1990 (NSW)  
Mental Health Commission Act 2012 (NSW)



Multicultural NSW Act 2000 (NSW)  
NSW Carers Recognition Act 2010 (NSW)  
Privacy and Personal Information Protection Act 1998 (NSW)  
Status of Children Act 1996 (NSW)

### **Victoria**

Carers Recognition Act 2012 (Vic)  
Charter of Human Rights & Responsibilities Act 2006 (Vic)  
Disability Act 2006 (Vic)  
Equal Opportunity Act 1995 (Vic)  
Privacy and Data Protection Act 2014 (Vic)  
Racial and Religious Tolerance Act 2001 (Vic)

### **South Australia**

Carers Recognition Act 2005 (SA)  
Disability Services Act 1993 (SA)  
Education Act 1972 (SA)  
Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)  
Equal Opportunity Act 1984 (SA)  
Racial Vilification Act 1996 (SA)

### **Australian Capital Territory**

Discrimination Act 1991 (ACT)  
Disability Services Act 1991 (ACT)  
Freedom of Information Act 1989 (ACT)  
Human Rights Act 2004 (ACT)  
Human Rights Commission Act 2005 (ACT)

### **Queensland**

Anti-Discrimination Act 1991 (Qld)  
Carers (Recognition) Act 2008 (Qld)  
Disability Services Act 2006 (Qld)  
Human Rights Act 2019 (Qld)  
Information Privacy Act 2009 (Qld)  
Northern Territory  
Anti-Discrimination Act 1992 (NT)  
Carers Recognition Act 2006 (NT)  
Disability Services Act 1993 (NT)  
Information Act 2002 (NT)

### **Tasmania**

Disability Services Act 2011 (Tas)  
Personal Information Protection Act 2004 (Tas)

