

DIGNITY OF RISK VERSUS DUTY OF CARE POLICY

Policy number:	4.5.0	Approved by Management Committee:	24 th November 2020
Version:	3.0	Signed off by Executive:	24 th November 2020
Responsible person:	Coordinator	Scheduled Review Date:	24 th November 2023

Purpose

Capricorn Citizen Advocacy passionately believes people with disabilities have the right to make an informed choice; to experience life and take advantage of opportunities for learning, developing competencies and independence.

It is important to remember that a duty of care and the right to a lifestyle that is as close as possible to "normal" are not contradictory. Capricorn Citizen Advocacy will always support Protégés by encouraging families, carers, support workers, service providers and other stakeholders to acknowledge the right of people with disabilities to take calculated risks.

We recognise that people with disabilities are citizens who possess the same human rights as everybody else and believe they should be enabled to demonstrate the same dignity of risk as the rest of the community. Duty of care does not exist to create restrictions for people with or without a disability.

Policy

1. Definition of 'Duty of Care'

To have a 'duty of care' means that families, carers, support workers, service providers and the community will do everything reasonable to take care of the safety and wellbeing of people with disabilities at all times. They have a responsibility to be careful where injury or harm is foreseeable.

This has a broader meaning than the 'primary duty of care' required to be met by employers to workers as set out in [section 19 of the Work Health and Safety Act 2011 \(Qld\)](#). This duty is limited to people conducting businesses, ensuring so far as is reasonably practicable, the health and safety of workers while the workers are at work in the business.

In accordance with this Act, service providers to people with disability also have an ongoing responsibility to their staff and the general community and therefore cannot be expected to provide supports where duty of care to their staff is compromised.

People who love, care about and support people with disabilities should acknowledge a duty of care to the person with a disability that they are supporting. A duty of care is breached if a person behaves unreasonably or fails to act. A duty of care can be breached either by action or inaction.

Harm to a person with disabilities can fall under any or all of these four headings:

- Physical;
- Mental;
- Emotional; and
- Financial.

2. Definition of 'Dignity of Risk'

Whilst accepting the principle of duty of care, Capricorn Citizen Advocacy also believes that people who have disability are entitled to 'dignity of risk'. Dignity of risk is an important concept. It places an emphasis on personal choice and self-determination.

The term 'dignity of risk' means that if appropriate risk management policies and procedures are put in place and common sense is applied in their implementation, it is feasible that a person with disability can be supported to fulfil their desired goals.

Families, carers, support workers and service providers for people with disability are under obligation to ensure their duty of care is always carefully balanced against dignity of risk. Capricorn Citizen Advocacy believes that Protégés have the right, like anybody else, to take a calculated risk.

It is important to understand that this principle is enshrined in law. *The Disability Services Act 2006 (Qld) in Part 2 Disability Rights*; states in section 19(3);

"Principle that people with a disability have the same human rights as others";

"When using disability services people with a disability have the right to - ...

(b) receive services in a way that results in the minimum restriction of their rights and opportunities..."

3. 'Least Restrictive Alternative'

The '*Least Restrictive Alternative Principle*' sets out the need of people who support the lives of people with disabilities to be the least intrusive on their lives, and that there are no unjustified restrictive practices imposed on people with disabilities' daily routines, physical movements and freedom of association.

Capricorn Citizen Advocacy believes people with disabilities possess a right to live in an environment which is most supportive and the least restrictive of their freedom.

4. Statements of Principle

Capricorn Citizen Advocacy will work with families, carers, support workers and service providers in order to see they adhere to the following statements of principle;

- We will respect your autonomy and independence.
- You will have the opportunity to exercise choice and make decisions about your life.
- We encourage you to be involved in decision-making processes at various levels of service delivery, either by participating directly or having a representative participate.
- When assisting you to exercise choice and make decisions, we will take care to ensure you understand the meaning of the options presented; and we will give you as much information as possible to enable you to make informed choices.
- Any risk that you may face as a result of a decision will be discussed. If there is doubt about the possibility of harm, you can further discuss these concerns.
- We believe we should support you to exercise your right to make decisions about issues affecting you by ensuring:
 - 1) Individual Care Plans state YOUR preferences and goals;
 - 2) Day-to-day routines give maximum opportunity for you to exercise choice and make decisions;
 - 3) You are encouraged, to make decisions about your residence, employment, education, health and all other systems and relationships;
 - 4) You are offered opportunities to develop skills required to participate in meetings or other forums and environments, and
 - 5) You are supported in making decisions about who will assist you in your personal care and the timing and the activities of your daily routine.

5. Role of Capricorn Citizen Advocacy

- Capricorn Citizen Advocacy will encourage, support and train Citizen Advocates to support their Protégés and to convince their families, carers, support workers and service providers to recognise their human right to exercise dignity of risk.
- This includes seeking assistance from Advocate Associates, the Management Committee, other Citizen Advocacy programs; obtaining legal advice; and using the official complaints processes of service providers and funding agencies.

Related Documents

Policy 1.0.0 Vision, Mission and Principles

References

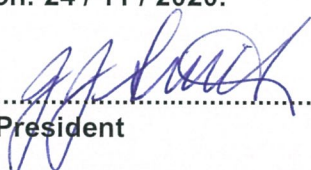
Capricorn Citizen Advocacy gratefully acknowledges the assistance of the following documents;

- *A policy developed by CODA South Association Inc; 'Duty of Care and Dignity of Risk'.*
<http://codasouth.org/807-2/>
- *s19(3) The Disability Services Act 2006 (Qld) Part 2*
<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/D/DisabServA06.pdf>
- *s19 Work Health and Safety Act 2011 (Qld) – 'Primary Duty of Care'*
www.Workinfo.com.au/legislation/ohs/qld-ohs-legislation

Ratification


This policy was adopted by Capricorn Citizen Advocacy's Management Committee at its meeting held on: 24 / 11 / 2020.

SIGNED:


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President

24 / 11 / 2020
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(Date)

SIGNED:


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Secretary

24 / 11 / 2020
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(Date)