



Dignity of Risk and Duty of Care Policy

Document number: PO2019-012

Approval

Policy owner	Executive Director, Vinnies Services		
Approved by	Executive Leadership Team		
Date approved	10.08.2022	Review date	10.08.2027

Purpose

1. The St Vincent de Paul Society NSW (**Society**) is committed to placing the people we assist at the heart of decision making and service delivery. This policy provides a framework to ensure the Society upholds the rights of people we assist to make autonomous decisions that affect their lives to the full extent of their capacity.
2. This policy aims to provide guidance to Vinnies Services employees and volunteers about:
 - the rights, responsibilities and inherent dignity of people we assist to make decisions that involve risk
 - the Society's commitment to a balanced approach between its service delivery standards, **duty of care** obligations and the **dignity of risk** of people we assist
 - a person-centred, trauma-informed approach and the process to continuously consider both positive and negative outcomes of 'risky' decisions.

Scope

3. This policy covers the Society's obligations and commitment to ensure duty of care and dignity of risk of the people we assist.
4. This policy applies to all employees and volunteers involved in providing, administering and/or governing Vinnies Services.
5. It is consistent with and does not replace any existing or related Society documents including Workplace Health and Safety (WHS), Risk Management, Behaviour Support, and Safeguarding Children and Young People policies and procedures.
6. If this policy conflicts with the Safeguarding Children and Young People Policy, the Safeguarding Children and Young People Policy will prevail.

Related policies and procedures

7. Related Society policies and procedures include:
 - Behaviour Support Policy
 - Code of Conduct for Members, Volunteers and Employees
 - Person Centred Service Delivery Policy
 - Person we assist charter of Rights and Responsibilities
 - Restrictive Practices Policy
 - Risk Management Framework
 - Safeguarding Children and Young People Policy and Procedures
 - Health and Safety Policy.

Policy principles

8. The Society recognises the inherent dignity and human rights of all people, including the right to **self-determination** and individual autonomy.
9. The Society is committed to supporting people we assist to choose to take some risk in engaging in their own life experiences. However, this needs to be balanced with our duty of care responsibilities to ensure that people we assist are not harmed in the process of engaging in life experience.
10. Dignity of risk means “the right of the individual to choose to take some risk in engaging in life experiences”.¹
11. Duty of care is a legal duty “to take reasonable care not to cause harm to another person that could be reasonably foreseen”.

Dignity of Risk

12. The Society recognises that personal risk-taking is an important and normal part of life and learning, and that some people – particularly people with disability, others with cognitive impairment such as dementia and acute mental illness, and those who have been institutionalised – may be denied this opportunity and right.
13. The Society supports each person to make informed choices and decisions in relation to their own lives and the services or support they receive.
14. All people are presumed to have capacity to make decisions about their lives unless there is compelling evidence otherwise.
15. People with disability have the right to enjoy the same legal capacity with others in the community in all aspects of life and have the right to access the support they require to exercise their legal capacity.
16. With consent of the person, the Society will collaborate with a person’s identified support network – including family, friends, carers, legal guardians, advocates, and others – to support the person to make and implement informed decisions about their life.
17. The Society recognises that people have the right to make decisions that affect their lives even if others do not agree with them or consider them ‘too risky’.
18. The Society will provide timely and accurate information to people we assist in a format accessible to them, to ensure individuals are supported to make informed decisions and understand the benefits and risks involved in those decisions. This will involve communication that is appropriate for their cultural background, disability, cognitive ability, or other consideration.
19. The Society will ensure people we assist have sufficient time and support to consider their options at all stages of decision making and implementing the decision.

Duty of Care

20. The Society will uphold its duty of care and will comply with WHS obligations in a manner that allows the person to take reasonable risks in their daily lives without placing employees and volunteers and others at risk of harm.

¹ National Disability Insurance Scheme (Quality Indicators) Guidelines 2018

21. Society employees and volunteers are expected to take **reasonable care** to avoid harm to a person who it can reasonably be foreseen might be injured by an act, or omission, of the Society.
22. The Society values safety and duty of care *and* a person's dignity, autonomy and self-determination. The Society will not unnecessarily enforce safety and protection measures at the expense of a person's dignity.

Balancing Dignity of Risk and Duty of Care

23. The Society takes a balanced approach to risk associated with a person's decision making about their own life.
24. In providing support to people we assist, employees and volunteers I will first consider the person's strengths and the potential positive outcomes of the decision and risk-taking for individuals. Employees and volunteers will balance this with assessment of the Society's role in risk management and minimising foreseeable harm to the person or others as a result of the decision.²
25. If a decision of a person we assist is outside the scope of support able to be provided by the Society and/or the decision could breach the Society's duty of care, the person will be supported to understand the consequences of the decision. The person will be supported to consider other options that may provide similar benefits to the person but do not pose unnecessary risk(s) to the person or others.
26. The Society will not withdraw or deny access to supports required by the person solely on the basis of a dignity of risk choice that has been made by the person that does not contravene the Society's duty of care.
27. The Society recognises the importance of providing continuing training and development for employees and volunteers on safety, self-determination, **risk enablement** and support for decision making, to support good professional practices and ethical judgements. The Society will provide education and training on legal concepts of negligence and decision-making capacity and how they relate to upholding a person's dignity of risk.
28. The Society will develop resources and tools to assist employees and volunteers to assess and manage the tensions between supporting positive risk-taking, duty of care, promotion of safety, legal requirements, acceptable risk and the dignity of risk.

Documentation

29. The Society will ensure dignity of risk decisions or guidance are:
 - documented in a person's file on Microsoft Teams or the Society's Client Information System (SCIS) including:
 - process and actions taken by the Society to provide support for decision making, decision implementation and risk mitigation
 - decisions made by people we assist where the risks are understood and the person chooses to implement the decision anyway

² The Society recognises and understands the fundamental differences between risk as described in ISO31000:2018 and the WHS Act 2011. The WHS Act 2011 is based around the premise a WHS risk cannot be accepted, transferred or assigned. A WHS risk must be eliminated or the residual risk, after controls are in place, is to be "as low as reasonably practicable".

- any action taken by the Society or others when such a choice is made where the person does not understand the risk involved
- actions taken to support the person to implement their decision so any negative impacts on themselves or others are reduced
- who agrees and who disagrees with the decision and/or the implementation strategy (e.g. the person, family, guardian, employees and volunteers etc.)
- progress and support during implementation of a decision, including any changes the decisions and implementation plans
- decisions about withdrawal or modification of support if implementing the person's decision is likely to breach the Society's duty of care to the person or others
- written in line with our person-centred approach to support for decision making, including: identifying the person's strengths, abilities, goals and wishes; cultural, communication and support needs; benefits of risk-taking in decision making including outcomes for the person's well-being; and details of interactions with the person's support network
- managed according to the Society's Record Management Policy, Record Retention Schedule and Privacy Policy
- retained in line with the management of the person's file; if they are 18 years of age and over, for a minimum of seven years from the date of their last contact with the Society, as noted in the person we assist's file or if they are under 18 years of age, until the person turns 25 years of age.

Roles and responsibilities

30. Employees and volunteers are responsible for:

- familiarising themselves with this policy.

31. Employees and volunteers who directly support people we assist are responsible for:

- working with people using a person-centered and strengths-based approach – including supporting autonomy and **positive risk taking**
- documenting decisions and choices of people we assist, including discussions of risk and consequences for decisions; and agreements or otherwise to implementing the decision
- seeking support from Managers/Team Leaders and/or relevant colleagues to understand these policy principles and implementation, as needed.

32. Managers/Team Leaders are responsible for:

- fostering a person-centred, risk enablement approach to service delivery
- ensuring employees and volunteers have relevant training, supervision, information and support to implement this policy
- overseeing risk enablement and assessment processes to ensure a fair balance between positive risk-taking and individual autonomy, and duty of care
- overseeing and supporting employees and volunteers to implement the Dignity of Risk and Duty of Care Policy.

33. The Executive Director, Vinnies Services is responsible for ensuring this Policy is communicated across the Society.

Review

34. This policy is scheduled for review every five years from its date of approval, or more frequently as needed to align with legislative or practice changes. The effectiveness of the socialisation and operation of this policy is to be evaluated and reviewed by the Executive Director, Vinnies Services.

Further assistance

35. Employees and volunteers should speak with their Manager or Team Leader regarding the implementation of this policy.

36. Feedback on the policy can be provided to the Executive Director, Vinnies Services.

References

37. Relevant legislation, regulations or other instruments:

- Aged Care Quality Standards 2019
- Australian Health Ministers' Advisory Council, "A national framework for recovery-oriented mental health services: Guide for Practitioners and Providers" 2013
- Clinical Care Standards Alcohol and Other Drug treatment
- La Trobe University, 'Enabling Risk: Putting Positives First'
- Morgan, S., "Positive risk-taking: a basis for good risk decision-making", Practice Based Evidence, *Health Care Risk Report*, March 2010
- National Disability Insurance Scheme Practice Standards and Quality Indicators July 2021
- NSW Civil Liability Act 2002 No 22
- NSW Disability Inclusion Act 2014
- QIC Health and Community Service Standards 7th Edition Version 1.1
- United Nations Convention on the Rights of Persons with Disabilities
- United Nations Universal Declaration of Human Rights
- WHS Act 2011
- WHS Regulations 2017

Approval and amendment history

Version	Approval authority	Date	Amendment summary
Doc 3	St. Vincent de Paul Society NSW Sydney Archdioceses	November 2017	
Doc PO2019- 012	Executive Leadership Team	03.12.2019	Major revision of policy

Doc PO2019-012	Executive Leadership Team	10.08.2022	Desktop review. Update of language from Personnel to Vinnies Services employees and volunteers, clarification of distinction between dignity of risk and duty of care, additional information added to record keeping requirements and retention timeframes.
----------------	---------------------------	------------	--

Appendix 1: Definitions

38. Relevant definitions include:

Term	Definition
Dignity of Risk	Dignity of risk means “the right of the individual to choose to take some risk in engaging in life experiences”. ³
Duty of Care	<p>A duty of care is a legal duty to take reasonable care not to cause harm to another person that could be reasonably foreseen.</p> <p>Duty of care exists where a client is reasonably likely to be harmed by an act or omission of the Society (staff, members, volunteers, governing bodies).</p> <p>Duty of care is part of common law and an aspect of the law of negligence. To establish negligence it must be shown that:</p> <ul style="list-style-type: none"> - a duty of care existed - there has been a breach of duty, meaning that the incident could have reasonably been foreseen, and the Society failed to take reasonable steps to prevent the incident from occurring, and - that harm has been suffered, which was caused by a breach of the duty of care. Harm includes personal injury or death, damage to property, and/or economic loss.
Employee	An employee is a paid member of staff unless otherwise specified. This includes full time, part time, fixed term or casual staff, contractors providing services to the Society and those engaged in the performance of duties for the Society from a labour hire agency.
Positive risk taking	Positive risk taking, or risk enablement, is an approach which recognises that risk is not only an inevitable part of life but often a welcome and necessary one.
People we assist	People receiving Society services, whether those services are financial or non-financial, and whether those services are delivered in the person’s home, a formal setting or elsewhere.
Reasonable Care	Reasonable care is a subjective test used to determine negligence. Someone is acting with reasonable care if an ‘ordinary’ person would act in a similar way under similar circumstances. For professional staff, an ‘ordinary’ person would be someone similarly employed and trained in providing services to people we assist. i.e. if the staff member was acting under professional standards of practice and following the Society’s policies and procedures, it would be expected that they took reasonable care.

³ National Disability Insurance Scheme (Quality Indicators) Guidelines 2018

Risk enablement	Risk enablement, or positive risk taking, is an approach which recognises that risk is not only an inevitable part of life but often a welcome and necessary one.
Self-determination	For an individual, to have the ability and power to make their own choices and decisions.
Volunteer	A volunteer is any person who performs unpaid work for the Society.