Duty of care and dignity of risk policy

Purpose and Scope
This policy describes how Access4u and its associated entities (we, our us) balance duty of care and dignity of risk in the delivery of safe, high-quality services for our customers. This policy recognises the duty of care we owe to our customers to take reasonable care to protect their safety and wellbeing while supporting them to exercise informed choice and control in the delivery of their supports to take advantage of opportunities for learning, developing competencies and independence and, in doing so, enable dignity of risk. Our primary duty of care to our customers is that we protect their dignity first by safely empowering them to make their own choices. This policy is mandatory for all our employees, contractors, students, volunteers, visitors, board members, and any other person supporting our customers or that have a responsibility for the safe operation of our services.

Responsibilities and delegations	
This policy applies to	Governing Body. Staff and Volunteers
Specific responsibilities	**The Board –** Responsible for ensuring effective governance mechanisms are in place. **The CEO and Managers –** Responsible for monitoring and ensuring adherence to Policy and related procedures. Ensure due diligence and take reasonable steps to ensure Access4u are meeting their obligations. Ensure objectives of the policy are achieved. **Staff –** Responsible for adherence to this and related policies, procedures and forms that support this policy.
Policy approval	CEO

Policy context – this policy relates to:	
Standards	• Family and Community Services Act 1972 • National Disability Insurance Scheme Quality and Safeguarding Framework • National Standards for Out-of-Home care (NOOHCS) • The Office of the Guardian for Children and Young People - Charter of Rights
Legislation	• Children and Young People (Safety) (Transitional Provisions) Regulations 2017 • Children and Young People (Safety) Act 2017 • Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017 • Disability Discrimination Act (DDA) 1992 • National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018

	• National Disability Insurance Scheme Act 2013 • The Disability Act 2006 • The Disability Services Act SA 1993 • United Nations Convention on Rights for People with Disabilities
Contractual obligations	• Government of SA, DCP Contract Management Framework • NDIS Code of Conduct
Organisation policies and procedures	• Code of Conduct • Incident management policy • Zero tolerance policy • Reducing restrictive practices policy • Positive behaviour support policy • Disciplinary policy
Forms, record keeping, other documents	

Definitions for the purpose of this policy the following definitions apply:	
Word	**Definition**
Decision-Making Ability	An understanding of the service user's support needs when making a decision. A service user must be assumed to have Decision-Making Ability unless all practical steps have been taken to assist them to make the decision and they remain unable to, or they have clearly indicated that they would like support to make the decision.
Dignity of risk	is the concept of allowing a person the right and dignity to take reasonable risks, and that impeding this right can limit our customer's growth, self-esteem and overall quality of life.
Duty of care	is our responsibility (under Common Law) to take reasonable care to ensure our actions, or inactions, do not cause injury or harm to our customers or employees. This means that we must anticipate risks for our customers and employees and take reasonable care to prevent them coming to harm.
Least restrictive option	is the action or environment that allows our customers to live with minimal restrictions. 'Least restrictive' or 'minimal intervention' recognises any restrictions on choice and control must be minimal and evidence based. This makes sure there are no unjustified restrictive practices imposed on our customer's daily routines, physical movement and freedom of association.
Negligence	is the failure to take reasonable care to protect the safety and well-being of customers under our duty of care. It is the basis for a civil claim for damages for harm caused because of any breach of duty of care where: • harm was actually caused; • the alleged harm resulted from a breach of duty of care; • the resultant harm was foreseeable; and • reasonable steps were not taken to avoid harm.

Positive behaviour supports	are strategies that promote positive rather than negative behaviours. The goal of positive behaviour support is to improve quality of life outcomes for our customers and reduce or eliminate restrictive practices.
Reasonable foreseeability	is used to determine negligence. It is when someone should have been able to reasonably predict that their actions or inaction would lead to a particular consequence.
Representative	A person or organisation who assists the service user requiring support in the decision-making process. As a last resort to prevent harm, the Representative may make decisions on behalf of the service user which reflects their will and preferences. A Representative is designated by a service user, or by appointment from another body if the service user cannot nominate a Representative and includes a Substitute Decision Maker.
Restrictive practice	means any practice or intervention that has the effect of restricting the rights or freedom of movement of our customers, with the primary purpose of protecting the person or others from harm.
Safeguarding	means doing everything reasonably possible to keep our customers safe without diminishing their basic human rights.
Self-determination	is the right of our customers to choose and set their own goals, be involved in making life decisions, self-advocate, and work to reach their goals.
Standard of care	is what is expected of any other reasonable person who performs the same duties. The appropriate standard of care is assessed on what action could reasonably be foreseen by another person in the same situation. This is not about having to be the perfect worker but about being good enough and doing your job as well as any other worker.

Policy Statement

The United Nations Convention on the Rights of Persons with Disabilities1 highlights the importance of providing people living with disability the opportunity to participate in economic and social life on the same basis as all people, and their right to make choices about their life. The *National Disability Insurance Scheme Act 2013 (Cth)* is one way Australia complies with this Convention.

We must keep our customers safe while enabling them to exercise informed choice and control in the delivery of their supports. We must also provide opportunities for them to make decisions about what is important to them to lead a meaningful life. We acknowledge that dignity of risk is an important part of their choice and control.

We acknowledge that balancing dignity of risk and duty of care can be challenging. Rather than thinking of this pair of concepts in terms of one or the other, it is important to see how they can work together. It is crucial we empower our customers to make their own decisions. By providing them with the tools and information they need to make decisions effectively, our customers will be better able to exercise their dignity of risk. It is our duty of care to give our customers as much knowledge and support as possible about their rights, abilities and opportunities. Our customers have their own passions, goals and dreams, and it is important they feel empowered to achieve these in a way that suits their needs and abilities.

Implementation

General principles

We make sure our employees, leadership and Board of Directors understand their duty of care responsibilities within the scope of their role and that this duty of care is not breached by any act or omission.

We will take all reasonable steps to understand and implement the principles of duty of care and dignity of risk, recognising the rights of our customers to make informed choices, and exercise choice and control over their lives including taking calculated risks.

When making decisions about services and supports we:

- act in good faith, with the care of a reasonable person in the same position, and with reasonable belief our decision is in the best interests of our customer and organisation.
- ensure dignity of risk is respected by promoting and supporting the contribution of our customers, their family, and decision makers. Our customers can participate as fully as they choose in our services and supports.

We take reasonable action to address behaviours of concern that are harmful to customers or others through the least restrictive option. This does not allow us to do anything unlawful such as wrongful imprisonment, assault, or using a prohibited practice, including inappropriate application of a restricted practice.

Assist customers

Access4u will support customers and/or their carers and advocates to make their own decisions regarding their care and support at all times by providing training and information about risk management, involving significant others, family and friends, seeking professional support. Access4u will respect all individuals' dignity of risk when making decisions about their service and care. If a customer's decision involves some level of risk, Access4u will ensure that the service user can foresee and understand the entirety of the risks associated with the decision to allow them to make informed decisions.

Access4u will assume that all customers have capability to make all decisions about their own care. Any determination otherwise will be made on a decision-by-decision basis, as a customer may have capability to understand and make informed decisions in one area of their care but not others. Where customers are unable to make informed decisions on their own behalf

Where customers are unable to make informed decisions on their own behalf Access4u will arrange for assessment by an appropriate professional, (this may also include application for a Guardianship Order for ongoing decision-making support if the client is at risk). For further guidance on supported decision-making, please refer to the Supported Decision Making and Consent Policy.

Access4u will record evidence of each customer's decisions and information provided to them in the customer's record, and obtain their consent for receiving services, or opting out of receiving services, to confirm their decisions and demonstrate that the organisation has fulfilled their duty of care.

Customer Safety

Access4u has in place a number of safety systems and procedures to ensure individual and environmental safety (refer to Organisation policies and procedures of this document). Access4u will also review and maintain a robust risk management framework to guide further safety procedures and ensure the safety of staff and customers.

Access4u also prioritises preventing the abuse of vulnerable individuals in any form: psychological, physical, financial, sexual, chemical and neglect. Access4u's Safeguarding policy is clearly communicated to all customers and workers to prioritise customer safety and ensure any allegations of abuse are managed in accordance with Access4u's Safeguarding procedures.

Dignity of risk

Our customers have the right to take calculated risks, where they are informed of and understand the risks involved, if the likely benefits outweigh the risks and the rights of others are respected.

Informed decision-making discussions and the customer's decision is documented in their file.

Where a customer's disability prevents them from making informed decisions, a parent, legal guardian or legally appointed representative will support their decision making.

Duty of care

Individualised support planning ensures we know our customers, can identity risks and use reasonable problem-solving skills and evidence based practice to safeguard the people we are supporting. This includes:

- making sure our employees are fully informed and have the skills to safely support our customers, and appropriate staff to customer ratio is included in support planning.
- Identify situations that could potentially cause injury or harm to a customer or other person and/or loss or damage to property and removing or minimising the risk.
- Explaining any risk to our customer or their decision maker and helping them to decide on an informed course of action and documenting these discussions in the customer's file. Where this is not appropriate or possible, taking all reasonable steps to ensure that potentially harmful situations are avoided or risks minimised, and documenting this in the customer's file.
- Teaching customers and employees to recognise situations that are potentially harmful and how to deal with or avoid them.

Our employees take reasonable care to protect their own health and safety and the safety of others. This includes following support plans and other plans (such as positive behaviour supports), compliance with policies, procedures and instruction, attending training, and using personal protective equipment

Where our customers have known behaviours of concern, we will support the development of a positive behaviour support plan with strategies that include the least restrictive option.

Our employees are fully informed about the standard of care that they are expected to provide to our customers.

Any breach of duty of care is identified and investigated (refer below).

Communicating duty of care and dignity of risk

We make sure our employees, leadership and Board are informed of their responsibilities of duty of care and supporting customers in dignity of risk through induction processes.

Any discussions we have with our customers or their decision maker about the risk of an activity to our customer, and how we support them to make an informed decision is documented in their file.

Breach of duty of care

A breach of duty of care exists when it is proven a person or organisation has not provided the appropriate standard of care. That is, a person or organisation has done something that they shouldn't have done or failed to do something they should have done. This does not mean that making a mistake is a breach of duty of care; it depends on the reasonable foreseeability. We need to consider if the person could have known at the time, that the outcome of their action or inaction was possible, and that there were reasonable options available to them to prevent it.

A breach or failure of duty of care will be managed through disciplinary procedures covered by our Code of conduct.

Any known or likely breach of duty of care must be reported immediately to the manager or Executive Manager, documented in the customer's record and reported following our Incident management policy. Open disclosure principles should be followed to inform the customer, their family or decision maker of the incident for more information). An investigation into the incident will be undertaken and decisions and outcomes will be documented in the customer's file and the customer, their family or decision maker notified of actions taken. (Refer to our Staff Disciplinary policy and procedure for more information). Significant care concern incidents will be reported to our Board of Directors.

The following actions may be considered if a breach of duty of care occurs or is likely to occur:

- confirming with the customer and/or their decision maker their experience and goals
- revision of relevant policies or procedures.
- developing additional or revising existing employee training programs.
- developing or revising a positive behaviour support plan.
- creating a safer workplace environment.
- rotating employees or changing the staff to customer ratio.
- review of the service, program or activity.

Behaviours of concern and positive behaviour support

Employees will use their professional skills and experience to decide on what actions they should take in any situation of potential harm. This does not allow them to do anything unlawful such as wrongful imprisonment, assault, use of a prohibited practice or inappropriate application of a restricted practice.

When a customer's behaviour may cause harm to themselves or others, we will try to determine the cause of the behaviour and take appropriate action. This may include changing the program or developing a positive behaviour support plan, where appropriate. In managing the situation employees must also take necessary action to ensure that customers do not harm themselves or others. The customer and/or their decision maker will be consulted and informed as relevant. For more information refer to our Eliminating restrictive practices policy and Positive behaviour support policy.

Incident management

Access4u will document and investigate all reported incidents in line with Incident Management and Procedures and take immediate action to ensure the safety and well-being of the customer. Access4u will review the incident with the aim to prevent or minimise any future risk of harm.

Incidents that involve or could involve abuse will be reported in accordance with Access4u's *Customer Safeguarding policy, 5 Step Response to Abuse Flow Chart* and any applicable legal requirements.

Other incidents will be reported based on the Customer incident management policy.