



KINNY | LEGAL

Dignity of Risk in Aged Care

Guideline



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What is 'dignity of risk'?

Dignity of risk is a term used to describe the right of a consumer to make their own decisions about their care and services, as well as their right to take risks. It is an acknowledgement that living a full life involves taking risks and that care givers should be concerned with both the quantity and quality of life when providing care and services.

This is a key concept codified in Standard 1 of the Aged Care Quality Standards. One requirement of this Standard is that an aged care provider can prove they support their consumers *"to take risks to enable them to live the best life they can"*.

Meeting this requirement is not as simple as blindly letting the consumer take whatever risks they want. Aged care providers must take certain precautions to ensure the request is well informed and properly understood. Aged care providers also have several other obligations including to provide a safe environment and meet the duty of care owed to the consumer, staff and others, which must be balanced against any requested by a consumer.

Who plays what roles?

1. Consumer

The consumer communicates their wants, interests, beliefs and preferences. They also make directions and requests about their care and lifestyle as part of a consumer directed care model. Usually, these communications are with the staff who provide the care and services directly to the consumer.

2. Care Staff

Care staff are the employees who provide care and services to the consumer. They are the ones most likely to receive a dignity of risk related request, so it is important that they know how to identify the request and respond in accordance with appropriate policies and procedures. Common, low-risk requests may be able to be dealt with by these staff, supported by appropriate policies, procedures and training. Other requests should be escalated to more senior staff such as a manager or compliance officer.

3. Senior Staff

Senior staff managing unusual or higher-risk requests require different training to care staff. They need to have a good understanding of the Aged Care Quality Standards and how to balance the need to respect dignity of risk with the aged care provider's various other obligations. Additional policies, procedures and other guidance (e.g. checklists) are required to help them with this process. They may need to seek advice from an aged care law specialist.

4. Board

Standard 8 of the Aged Care Quality Standards confirms what has long been the case at general law – that the Board maintains overall responsibility for all aspects of the

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provision of care and services. This includes proper management of dignity of risk requests. The Board does not necessarily have to respond to dignity of risk requests personally but must at minimum ensure that appropriate structures are in place to ensure they are properly managed – for example, by ensuring that:

- a. appropriate policies and procedures are in place;
- b. staff receive appropriate training on how to manage requests and record the actions taken in a suitable information management system;
- c. staff have a suitable information management system they can use to make comprehensive, contemporaneous records of the management of a request;
- d. the systems in place are regularly reviewed and improved as part of a continuous improvement program – for example, audits of policies, procedures, systems, training programs, staff role descriptions and staff KPIs.

How to respond to a dignity of risk related direction

1. Understand your organisation's role

An aged care provider's role is to support a consumer's informed decision-making, not tell them what to do. Standard 1 of the Aged Care Quality Standards states:

...organisations need to take a balanced approach to managing risk and respecting consumer rights. If a consumer makes a choice that is possibly harmful to them, then the organisation is expected to help the consumer understand the risk and how it could be managed. Together, they should look for solutions that are tailored to help the consumer to live the way they choose.

2. Make sure you understand the consumer's perspective and reasons

Appropriate steps include:

- a. referring to information in the consumer's file about their needs, wants, beliefs and preferences;
- b. making sure that this information is up to date, by consulting with the consumer and care staff; and
- c. asking the consumer to tell you in their own words why they are making the request and what they want to achieve.

3. Make sure that the request is based on an informed decision

Answering the following questions may be helpful to assess whether this step has been met:

- a. Have we explained the potential benefits and risks of each option to the consumer?
- b. How do we know that this information has been understood, considering any communication barriers and other difficulties (e.g. hearing loss, cognitive decline)?
- c. Has the consumer had the time to properly consider this information before forming a view as to whether they wish to proceed?

- d. Where appropriate, have we presented alternative options to the consumer (i.e. options that will achieve what the consumer wants to achieve without exposing the consumer to the same level of risk)?

4. Balance the risk of harm with dignity of risk

Attempting to balance the risk of harm to a consumer with their dignity of risk can be a difficult task. This procedure should include an assessment of:

- a. all potential harms to the consumer and how likely each harm will occur;
- b. what reasonable precautions can be taken in response to each risk of harm and how effective that will be in reducing the relevant risk; and
- c. what risk management steps can be taken in response to the risk to the organisation and how effective will they be – e.g. a risk management plan, waivers, disclaimers, medical clearances.

You will then need to form an opinion as to whether the request can be accommodated. When forming this opinion, it is important to keep in mind that aged care providers are not required to accommodate any and all requests from a consumer but are required to take a sensible and 'problem-solving' approach to the proposed risk taking.

5. Discuss the outcome of your assessment and any alternative options

If your organisation can accommodate the request, you should inform the consumer of that determination and explain all key risks involved and how they can be managed. Any alternative options should be discussed as well.

If your organisation cannot accommodate the request, it should give full reasons and answer any questions the consumer might have. Any alternative options should be discussed as well, along with the risks and benefits of each option and how risks can be managed.

6. Demonstrating assessment by record keeping

All staff involved in assessing and communicating about the request must each make comprehensive, contemporaneous records of all steps taken. These records should include:

- a. All internal and external communications.
- b. File notes of the assessment process (e.g. completion of the above steps).
- c. All relevant documents (e.g. disclaimers, waivers, medical clearances, large-print documents used to communicate risks to a vision-impaired consumer, internal checklists).

This is essential to ensure your organisation can demonstrate its compliance with all legal obligations in the event of a complaint or audit. It is also an important risk management and quality of care precaution – to ensure that all requests are being

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managed consistently and in accordance with all internal policies, procedures and systems.

Checklist

There is no 'one-size fits all' approach to managing dignity of risk issues. That said, most organisations would likely benefit from having the following in place:

- ☐ Dignity of Risk Policy.
- ☐ Dignity of Risk Escalation Procedure.
- ☐ Dignity of Risk Assessment, Management and Communication Procedure.
- ☐ Dignity of Risk Decision Flowcharts.
- ☐ Dignity of Risk Training – Carer Staff.
- ☐ Dignity of Risk Training – Management, Compliance Team and Board.
- ☐ Dignity of Risk Communication Resources for Consumers and their Representatives (e.g. in a resident handbook, information sheets).

Do you need help?

We are one of Australia's leading aged care law firms. To find out more about how we can help, contact Jessica Kinny, Solicitor Director, on **02 9199 4563** for a confidential discussion.

Disclaimer

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