

## 17.1 Duty of Care Policy

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Responsible person:	EO	Scheduled review date:	June 2021

### PURPOSE

This policy is to outline Interchange IE's responsibility and duty of care toward its service users. It is in the interests of Interchange IE's participants, as well as consistent with legal obligations, that Interchange IE behaves reasonably in delivery of its services to avoid harm or injury to those participants.

### SCOPE

Interchange IE regards a 'duty of care' as its responsibility to take all reasonable care in relation to another person or persons. A duty of care is breached if a person behaves unreasonably. (See below for what is considered 'reasonable')

The following factors need to be taken into account when making decisions about the reasonableness of any action:

- The risk of harm and the likelihood of the risks occurring
- The sort of injuries which may occur and how serious they may be
- Precautions which could be taken
- The usefulness of the particular activity which involves risk
- Any statutory requirements or specific directives from Interchange IE through Interchange IE policies, procedures or management
- Current professional standards about the issue
- Any other factor which is relevant in a particular situation or circumstance

The factors all need to be considered together within the framework of what 'a reasonable person' would do.

### POLICY

Interchange IE will uphold its duty of care to all participants who use its services.

Interchange IE will support staff to exercise their duty of care by providing guidance and support through policies and procedures, training, a position description, a code of conduct, and supporting a work culture of evaluation and risk assessment.

### PROCEDURES

In order to exercise a duty of care, staff must understand the following:

- the basic concept of 'owing' a duty of care
- the concepts of 'reasonable' actions
- the 'negligence' that can be the result of an unreasonable action or omission-failure to act.

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### 1. Owing a Duty of Care

The law of negligence is concerned with situations where a failure to take care results in some harm, injury or loss. It includes the concept of a duty of care owed by one person to another. The owing of a duty of care correlates to the relationship between the persons and the function of that relationship. Staff providing support to the participants of Interchange IE are in a position of responsibility for the participant/s in their care and as such owe a duty of care to them. A duty of care is breached if a person acts unreasonably or fails to act where action could be reasonably expected.

### 2. Negligence

There are three parts to the definition of negligence and all three elements must be present in any situation for Interchange IE and/or a staff member to be considered negligent by a court.

- I. The organisation, and therefore the staff, must owe a duty of care to a particular person or group of people.
- II. There must be a breach of this duty of care i.e. A staff member must have done something that a reasonable person would not have done in a particular situation or circumstance.
- III. Some harm must have been caused to the person because of this unreasonable action.

### 3. Reasonable

The reasonableness of what a person has done or not done is assessed by considering how a hypothetical reasonable person at the same level e.g. a co-worker would have behaved in the same situation.

What is considered reasonable will depend on all the circumstances. What is reasonable in one situation will not necessarily be reasonable in another.

### 4. Prevention of Harm

Staff are expected to take steps to avoid, reasonably foreseeable, risks of harm or injury. However, no one will be found negligent for failing to prevent a completely unlikely or improbable incident resulting in harm to a participant, particularly if staff can demonstrate work practices that indicate that risks are given due consideration and assessed sensibly for every changing and applicable situation.

### 5. Precautions

It is important for staff to give consideration to available precautions. If the risk of harm from an activity can be reduced or eliminated by taking relatively simple precautions, then it will not be reasonable to proceed without taking those precautions.

### 6. Supporting Independence and Decision Making

There may also appear to be a conflict between the notions of self-determination, or participant choice and independence, and duty of care and the answers will not always be clear. However, this tension can be regarded as a factor that staff and managers should consistently analyse and balance in their roles. The role requires staff to provide support which encourages self-esteem, skill development and choice whilst recognising individual competencies and support needs. The fact that a participant or family member gives their consent or expresses a wish to do a particular activity does not justify a staff member acting unreasonably to assist or allow the client to perform that activity.

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### **RELATED LEGISLATION AND POLICY**

Wrongs and Other Acts (Law of Negligence) Act 2003

<https://www.legislation.vic.gov.au/as-made/acts/wrongs-and-other-acts-law-negligence-act-2003>

Code of Conduct

NDIS Code of Conduct Guidance for Workers

[https://www.ndiscommission.gov.au/sites/default/files/documents/2018-06/code\\_of\\_conduct\\_workers.pdf](https://www.ndiscommission.gov.au/sites/default/files/documents/2018-06/code_of_conduct_workers.pdf)

Risk Management Policy