

What is Duty of Care?

Duty of care is a legal term that describes a person's, or an organisation's, responsibility to take care that no one comes to any harm as a result of their actions or inactions. Harm or suffering includes physical, financial, psychological, racial or sexual harm or injury. All people in society have a right to safety and protection from harm.

Duty of care is elastic in practice so the level required will depend on the circumstances for each situation including such things as the environment, the people involved, the choices available and so on. Lots of factors come into play. The most important thing to remember is to do your very best to keep people safe.

For organisations and groups that provide services to others, it is important to remember that being reasonable about the duty of care required must be balanced against the needs of the client to make their own personal choices. Individuals are entitled to choose a certain level of risk, **if** they are able to do so. This is called 'Dignity of risk'. A person's ability to foresee risk will change according to their age, experience, knowledge and abilities.

Your duty of care is **not** an absolute duty to prevent all possible harm to everyone - that would be impossible! It is, however, a balancing act. It's about taking common-sense precautions to protect people from any obvious potential harm that *might* occur.

What is the difference between Duty of care and Negligence?

Duty of care falls under laws relating to negligence. Negligence is where a person or group can be held accountable for an injury caused through a direct breach of a duty of care. Please keep in mind that negligence is only relevant *if* a breach of duty of care has

resulted in an injury. A group need not fear legal repercussions where they can demonstrate that all reasonable efforts to ensure the protection from harm toward others have been made.

Volunteers working in the community through your organisation are not personally liable for any negligence claim if they have done their work appropriately. This would only change if they knowingly and deliberately broke the law in some way or were under the severe influence of a drug or other substance, or knowingly acted outside of the scope and conditions of, or authorization, of the organisation.

Under the law, an individual, organisation or group may be liable for a negligence claim against them if it is found to have breached a duty it owes by acting improperly - or not acting at all - to prevent risk or an injury occurring to someone else. This could mean significant financial penalties if it is shown they have demonstrated negligence.

What do we do?

Organisations or groups need to have policies and procedures documented and in place.

Understand what legal minimum standards are required for your type of work or service under state and federal laws. Ensure the minimum legal standards are included in your policy documents.

Prepare written position descriptions and duty statements for recruiting suitable volunteers. Even if the event is a "one-off" or a short-term event, it is still very important to have clear position descriptions and written agreements with your volunteers.

Only select volunteers who are appropriate to the role. Check referees and qualifications e.g.

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driver's licences. Conduct Police and Working with Children's Checks if legally required.

Remember that under Privacy laws you can only gather the personal information of people if it is specifically required for the volunteer role they will be doing. You cannot ask for information that is not necessary for their role in your organisation or group.

Ensure that volunteers have access to training and the information they need to safely carry out their role. Continue on-going training as required.

Remember that community standards and expectations can change over time in regards to what is considered a duty owed in the care of others. Keep in step, wherever possible, with community trends in privacy, safety and individual responsibilities and review your policies regularly.

Ensure volunteers and staff, are made aware of the organisation's policies and procedures and where they can access them. If giving volunteers' hand-outs or kits that describe some of these policies make sure they are in an easy-to-read document.

Promote clear expectations through agreements, role descriptions, codes of conduct etc. Promote an open culture of feedback and evaluation, including the organisation's grievance procedure.

Insurance – clearly outline:

- What insurance the agency holds and does not hold for the benefit of volunteers.
- What insurance the agency requires the volunteer to hold if applicable.
- The kinds of situations that are at the volunteer's own risk if applicable.

Remember your organization or group's duty of care, in regard to insurance, is to regularly seek professional advice and to be informed about your responsibilities in this matter.

Supervise and monitor volunteers in order to ensure that their work is satisfactory. Make sure your volunteers are supported in their roles and that their contribution is acknowledged regularly. Show your appreciation for the work your volunteers do by keeping them informed, listening to their concerns and acknowledging their input.

Counsel, warn and when necessary dismiss volunteers for unsatisfactory work or misconduct.

Remember Duty of Care is about taking reasonable precautions to protect those under your supervision and/or care from suffering any harm as a result of your actions or inactions.

Acknowledgements:

Nick Manning (2005) 'Duty of care in NSW youth & welfare services', Youth Action and Policy Association NSW
<http://www.yapa.org.au/youthwork/facts/dutyofcare.php>

The information contained in this information sheet is generic. Please contact your volunteer resource centre if you require further assistance.