



Risk & Rights

Upholding Client Rights in a Climate of
Risk Elimination

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Risk & Rights

Taking a Balanced Approach

Risk is defined as: “The possibility of experiences harm or loss”

Disability services are ‘risk averse’ and try to avoid risk by undertaking risk assessments and ‘banning’ risky activities.

Our fear of risk impacts on clients’ rights to lives where they have choice, autonomy and control

Through risk averse practices
these rights are being violated...

Examples:


- SINGLE bed for you!
- No Pets for you!
- No SUPPORT for you!



Outcomes of risk aversion...


- Clients are treated like children
- Clients are disempowered
- Services are routine
- Services are not responsive to client needs.





Reasons given by service providers for risk aversion...

- **Duty of Care**
 - Myth: I must protect my client from harm.
 - Reality: I must not act in such a way that I will harm my client. My client, who is of sound mind, can choose to undertake activities that have elements of risk. I have a responsibility to ensure they have information about the risks involved and that they can make informed choices.


A decorative graphic on the left side of the slide, resembling a spiral-bound notebook. It features a vertical metal spiral binding on the left edge, with the spiral looping through a series of dark, teardrop-shaped holes. The background of the notebook page is a light beige color, and the entire graphic is set against a dark brown border.

Reasons given by service providers for risk aversion...

- Occupational Health & Safety
 - Myth: I must ensure my staff are never injured.
 - Reality: I must increase health & safety as far as practicable (OHSA, 1984) while upholding the client's right to least restriction of their rights and opportunities (DSA, 1991)

Reasons given by service providers for risk aversion...

"The [OHS] Act **does not require employers to ensure that accidents never happen.** It requires them to take such steps as are practicable to provide and maintain a safe working environment. The courts will best assist the attainment of this end by looking at the facts of each case as practical people would look at them; not with the benefit of hindsight nor the wisdom of Solomon but nevertheless remembering that one of the chief responsibilities of all employers in the safety of those who work for them. Remembering that, such responsibility can only be discharged by taking an **active, imaginative and flexible approach** to potential dangers in the knowledge that human frailty is an ever present reality" Supreme Court of Victoria, 1992



The Standards for Disability Services talk about client rights...

- Service Access
- Individual Needs
- Decision Making and Choice
- Privacy Dignity and Confidentiality
- Participation and Integration
- Valued Status
- Complaints and Disputes
- Service Management, and
- Freedom from Abuse and Neglect.

The law talks about client rights...

Disability Services Act (DSA) 1991

Schedule 2 Section E says: "persons with disabilities have the same right as other members of Australian society to participate in decisions which affect their lives".

Schedule 2, Section F of the Disability Services Act (DSA) 1991 says: "persons with disabilities receiving services have the same right as other members of Australian society to receive those services in a manner which results in the least restriction of their rights and opportunities".



Client Rights Framework

The right to be treated as an adult and not perceived by others as eternally child like and to be treated with the dignity and respect accorded to adults.

The right to know: to hold and be provided with accurate **knowledge** about their own affairs and have access to information **in ways that the person can understand.**

The right to be sexual and to make and break relationships

The right to exercise risk taking.

The right not to be at the mercy of the individual attitudes of different support people



Client Rights Framework

The right to choice

The right to humane and dignified environments: a space that affords privacy, personal control and choice.

The right to live in the community

The right to make and participate in decisions

The right to challenge the status quo



Service Providers need to...

- Provide clients with information about their rights.
- Provide clients with information about risks.
- Work collaboratively with the client and the worker. Example:
Occupational Health & Safety
Client Impact Questionnaire

In closing...

People with disabilities have historically lived under the control & rules of others.

Deinstitutionalisation was to be a move to independence & choice

Instead the same rules that were applied in institutions are being applied in peoples homes and the community.

We need to do things a new way and strive to maximise choice, autonomy and freedom for people with disabilities.

In closing...

This new way:

- Accepts risk as an important part of life
- Sees the upholding of client's rights as important as managing risk.

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