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3.6 Child Care Services Taree & Districts Inc.

Decision Making and Consent

Child Care Services Taree & Districts Inc. (CCSTD) is committed to ensuring people with disability have the same legal rights as others and must have access to appropriate support to fully exercise these rights. Choices and decisions should be made directly by the Participant. In circumstances where an individual has difficulty making or is unable to make decisions, every effort must be made to facilitate a decision that is most likely to be in line with the person's preferences.

The Purpose of the Policy

Child Care Services Taree & Districts Inc. recognises that The National Standards for Disability Services promotes active participation in decision-making to safeguard and advance human rights, wellbeing and interests of people with disability. An objective of the National Disability Insurance Scheme is to enable people with disability to exercise choice and control in pursuit of their goals and the planning and delivery of services.

General Principles

- People with disability are informed of their inherent human rights and are supported to exercise these rights.
- People with disability have the right to participate in and contribute to the social, cultural, political and economic life of the community on an equal basis with others.
- People with disability have the right to live free from abuse, neglect, intimidation and exploitation.
- People with disability have the right to be respected for their worth, dignity, individuality and privacy.
- People with disability have the right to realise their potential for intellectual, physical, social, emotional, sexual and spiritual development.
- People with disability have the right to take their own chances and make their own mistakes.
- People with disability have the right to have access to appropriate assistance and support that will enable them to maximise their capacity to exercise choice and control, and realise their potential.
- People with disability are empowered to determine their own best interests, including the right to exercise informed choice and take calculated risks.
- The cultural and linguistic diversity of people with disability is respected.
- Intervention in the lives of people with disability occurs in the least intrusive way, with the smallest infringements on the fewest rights.
- Services and supports are based on contemporary evidence-based best practice with a strong focus on person-centred strength bases approaches.
- Participants are provided with information regarding the supports we provide and are given time to consider and explore all other alternative supports before signing the Service Agreement

Service Provider Responsibilities

Determining Capacity

A person is presumed to have decision-making capacity unless proven otherwise.

If it has not already been predetermined that a person has impaired decision-making capacity, individuals should have all decisions referred directly to them.

If there are doubts about a person's ability to make a particular decision, efforts must first be made to facilitate supported decision-making.

This policy also acknowledges that capacity is decision specific. That is, a person may have the capacity to make decisions in some circumstances or about some matters but not others. In addition;

- A person will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature
- A person will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time
- A person may fluctuate between having impaired decision-making capacity and full decision-making capacity
- A person's decision-making capacity will not be taken to be impaired merely because a decision made by the person results, or may result in an adverse outcome for the person.

It is the task of disability service providers and, if required, professionals such as psychologists and medical practitioners, to determine a person's capacity.

Dignity of Risk and Duty of Care

People with disability have the right to make informed choices to experience life and take advantage of opportunities for learning, developing competencies and independence and, in doing so, take calculated risks.

If a person isn't allowed to confront a difficult decision or its consequences, their right to be in control of their life is denied. Each individual has the right to take their own choices and make their own mistakes. Making a decision that seems unwise does not mean that a person lacks capacity. Disability service providers have a duty of care to ensure people with disability are not exposed to unreasonable risk so must work with people to help them strike a balance between achieving their life inspirations and goals and protecting themselves from unreasonable risk and harm.

Disability service providers must ensure that individuals have objective, accurate, and appropriate information in a format that they genuinely understand in order to make the best decisions for themselves.

Disability service providers are to support people to articulate their decision-making arrangements and record these in their individual support plans. This should include consideration of strategies that seek to support individuals to identify and manage risks and live their lives in a way that best suit them.

Where appropriate, disability service providers should maintain ongoing liaison with a person's family, nominated support and/or legally appointed guardian to ensure this.

Decision-Making when a Person has Capacity

For people who do not require support in decision-making, all decisions must be referred to the person. Disability service providers must respect and support the individual's decisions.

For people who require some support in decision-making, disability service providers must facilitate access to appropriate support and information to enable the person to make the decision for themselves as far as is practicable. In doing this, disability service providers should recognise that a person's views may be expressed through body language, behaviour, and/or through a

variety of verbal or non-verbal signs. Where needed, augmentative communication aids should be used to assist communication.

Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds are to be supported to make decisions in the context of their culture and heritage.

Decision-Making when a Person is determined to not have Capacity

In a situation where a person has been assessed as not having the capacity to make his or her own decision, a decision will need to be made on the person's behalf. This is known as substitute decision-making and can be either informal or formal.

Informal decision-making on behalf of a person with disability

Informal decision-making is where a person making a decision on behalf of another person has not been legally appointed. People who can make informal decisions include the person's family, friends, carer or nominated support. Most decisions can be made informally, including decisions about who a person wishes to see, their work, leisure, recreation, holidays or accessing services. However, there are certain situations where formal consent is required.

Disability service providers must ensure all informal decision-making arrangements are clearly recorded and communicated to relevant workers. Decisions can then be pursued through the agreed informal arrangements.

Formal decision-making on behalf of a person with disability

In situations where informal decision-making arrangements are considered to be insufficient, formal arrangements will need to be activated. Informal arrangements can be considered insufficient, for example when:

- There is conflict over decisions being made about the person
- The person's safety or the safety of others may be at risk and an order may be required. Where specific legislative requirements exist (e.g. consent to medical treatment).
- Formal arrangements should take a rights-based approach, and consider the person's individual wishes as much as possible regardless of his or her impaired decision-making capacity.

Disability service providers are required to record and maintain any formal decision-making arrangements for a person with disability. Any amendments to person's decision-making arrangements must be clearly recorded and communicated as soon as practicably possible.

Specific Consent Arrangements

Aside from decision-making on everyday issues, some decisions require specific consent from an individual or someone on their behalf.

CCSTD collects information with participants consent to consult and work with other professionals and support services to develop individual support plans.

CCSTD will work with other professionals and service providers to ensure participants receive the quality services and supports needed to achieve their individual goals.

In all instances, disability service providers must ensure that a person's consent arrangements, including any legal authorisations required to enable consent to be provided, are clearly outlined for, and understood by, direct care workers. Processes should be in place for regular review and updating of these arrangements. Disability service providers must also ensure that a person is

offered/provided with information about consent issues in a way they can fully comprehend, and that such information remains readily available.

When appropriate, disability service providers should maintain ongoing liaison with a person's family, nominated support and/or substitute decision-maker on matters of consent to ensure the person's needs and wishes are known and acted upon.

Consent in unplanned or emergency (non-medical) situations

At times unforeseen situations occur that result in a person with disability requiring immediate entry to a service or that require a disability service provider to make a critical decision for a person with disability. In these instances, the personal health and safety of the person with disability and the safety of others is the first consideration.

Where practicable, the service provider must determine if there is an advance care directive, personal plan or consent arrangements in place that may guide immediate decision-making. Following an immediate response, disability service providers must return to usual consenting and planning decision-making procedures outlined in this policy by close of business the next working day.

Worker Training and Information

Disability service providers are responsible for ensuring the ongoing training and education of workers. This may include, but is not limited to:

- Disability awareness
- Relevant legislation, policies, procedures and guidelines that may assist them in the direct delivery of support
- Information on determining capacity and consent
- Supported decision-making principles
- Duty of care responsibilities
- Documentation and reporting requirements
- Any individual processes that the disability service provider has in place.

Relevant Legislation and Standards

- NDIS Practice Standards
- NDIS Code of Conduct
- NSW Disability Service Standards (NSW DSS)
- NDIS Terms of Business
- Freedom of Information Act 1982
- Privacy and Personal Information Act 1988 (NSW)
- The Disability Inclusion Act 2014 (NSW) and Disability Inclusion Regulation 2014 (NSW)
- Mental Health Act 2007 (NSW)
- Ombudsman Act 1974 (NSW)
- NDIA National Quality and Safeguards Policy 2018
- Sex Discrimination Act 1984
- Racial Discrimination Act 1975
- Age Discrimination Act 2004
- Disability Discrimination Act 1992

- Anti-Discrimination Act 1977(NSW)
- Criminal Records Act 1991(NSW)
- Work Health and Safety Act 2011(NSW)