

## The Worker's Duty of Care

All human services workers – teachers, doctors, disability support workers and others – have to take care to avoid acting negligently in the decisions and actions taken in their work. This is called the common law duty of care.

### ❖ **What Does Duty of Care Mean?**

This means you must protect the interests of the person with a disability as part of providing support to them. Duty of care also includes your responsibility to yourself, your fellow workers and to others in your workplace. Duty of care is breached if a worker behaves unreasonably within a situation. Failure to act can also be unreasonable so duty of care can be breached either by an action or failure to act.

### ❖ **What is reasonable care?**

The “reasonableness” of any action or failure to act is based on the expectations of how a hypothetical “reasonable person” would have acted in the same circumstances. The circumstances include the potential for harm in the situation and the skills, training and experience of the worker.

The more the person with a disability depends on the service for their wellbeing, the more the support worker is required to do to ensure that they are not injured by his or her actions. For example, a worker leaving a person with very high physical support needs unattended may be viewed as unreasonable action. However a worker who leaves a person who has minimal support needs and was frequently left unattended may be viewed as reasonable.

Sometimes we have to make decisions in situations where duty of care is, or seems to be, in conflict with our ethical principles. Here are some examples of these difficult situations and the appropriate responses to them.

### ❖ **Case Situation:**

Mary is an in-home support worker. One day she sees that the Joan has an open box of chocolates in her kitchen. She knows that Joan is a diabetic and is on a sugar free diet, so she sits down with her and, after a talk, asks what she should do with the chocolates. Joan says she intends to eat them.

An appropriate response: Mary explains her concern and the reasons for it, tries to talk Joan around and suggest a sugar free alternative. However, she also tells Joan that if she does choose to eat the chocolates, it is her decision and reminds her of the consequences. She knows that Joan is able to make decisions competently. Before Mary leaves, she reports the details on the communication booklet for the day and advises her Case Coordinator. (If Joan was unable to make decisions competently, it would have been Mary's duty to remove the chocolates – this would be unlikely for someone living independently).

To sum up, reasonable care depends on the individual circumstances of each situation. It is your duty to assess each situation accordingly. Take into account your agency's policy, job role and work directions, any program and individual care plans that you have been asked to follow, and the individual needs and choices of the person with a disability for whom services are provided. When in doubt - Contact your Case Manager.