The first thing to realise is that duty of care and ethics are quite different things.

Working as a youth worker, your duty of care and your ethical responsibilities overlap, but:

- the source of your duty of care and the source of ethical youth work are completely different
- the consequences of a breach of duty of care and the consequences of a breach of ethics are somewhat different.

### What is duty of care?

Your duty of care is your legal duty to take reasonable care so that others aren't harmed. (For an introduction, see Duty of care in NSW youth & welfare services - link below).

Duty of care exists mainly as a mechanism for compensating people - providing them with funds for expenses (such as medical costs) which result from the harm they have suffered.

An injured person gains compensation if they sue (take a person or organisation to court) and prove that the other person or organisation breached their duty of care and this caused the harm. Their compensation usually comes from the other person's or organisation's insurance.

Because duty of care is ultimately about moving sometimes large sums of money from insurance policy-holders (car owners, home-owners, employers etc) via insurance companies, to injured people, there will always be pressure to change the rules.

Because it is a legal duty, the rules are defined (and from time to time redefined) by courts and parliaments. This happened most recently in 2002, when the NSW Parliament limited the duty of care in a range of ways.

Because of all of this, duty of care is not a good measure of youth work. It is quite possible to fulfil your duty of care, but still be a poor youth worker, even an unethical youth worker.

### What is ethics?

Ethics is a system of beliefs about moral judgment and right conduct. Ethics are moral principles adopted by a culture, group, profession or an individual to provide rules for ethical conduct.

Professional groups such as doctors, lawyers and psychologists have a code of professional ethics: a written statement of what is proper conduct as a doctor / lawyer / psychologist. If one of these workers breaches their code of ethics, they can be struck off - legally banned from working in that profession for a period of time.
Some youth workers work under a code of ethics:

- Some agencies have their own code of ethics
- The youth sectors in WA and ACT have each adopted the same code of ethics
- Many organisations and individual youth workers in NSW have endorsed the WA/ACT code of ethics or a similar one (see below).

However, unlike lawyers, doctors and some other occupations, there is no way of banning a person from working as a youth worker in NSW for breaching a code of ethics. An individual employer can take disciplinary action (which might include dismissal) against an employee for breach of their own code of ethics. However that youth worker can be hired by another employer.

**What about being professional?**

Over and above duty of care and ethics, there is a much broader concept which people call things like *best practice*, or *being professional* - basically being a good youth worker in the eyes of your peers and the public. Just fulfilling your duty of care and being ethical is not enough to make you a good youth worker.

Just what is best practice, or being professional, is always open to opinion and debate. Look to experienced youth workers and people with respect in the youth sector for advice and guidance.

So:

- **duty of care** is ... being safe enough *legally*
- **ethical practice** is ... right conduct *morally*
- **being professional** is ... well, working *professionally*.

**What about law?**

And then there is the law. As well as your *common law* duty of care, there is a range of legislation (acts of parliament) which affects youth work practice. Some laws (eg. child protection law) are written with youth work in mind, but many laws are written for wider society (eg. privacy law). The result is that some laws "fit" youth work practice well and some not so well.

In addition to legislation, there is a wide range of regulations, standards and guidelines affecting youth work. Some of these are mandatory (compulsory) and may have the force of law, and others are voluntary guides only.

**Laws & standards regulating NSW youth work**

Youth work in NSW is regulated by a range of laws and standards, depending on the funding program, the type of agency and the situation.

- **Out of Home Care**: highly regulated by the NSW Children & Young Persons (Care & Protection) Act and Regulations, and various standards monitored by NSW Department of Community Services (DoCS) and Office of the Childrens Guardian (OCG).

- **Supported accommodation (SAAP)**: Refuges and other supported accommodation services in NSW are moderately regulated by various policies of their funding bodies. Some (not all) NSW SAAP services and their residents are also bound by NSW tenancy law.

- **Non-residential youth work**: largely unregulated in NSW. Services must comply with funding body agreements and guidelines.

**Standards & guidelines for specific situations**: There are other laws, standards, codes and guidelines which usually apply to all youth workers in specific situations, such as:

- **confidentiality**: NSW & Australian privacy laws (see below)
- **access & equity/ non-discrimination**: NSW & Australian anti-discrimination laws
safety: occupational health and safety law, codes and guidelines

complaints: In all agencies funded by NSW Department of Community Services and/or run by local government (councils), complaints handling is monitored by the NSW Ombudsman

child protection: mandatory reporting in the Children & Young Persons (Care & Protection) Act; employment screening laws including the Working with Children Check; (certain types of agencies only) allegations against staff monitored by the NSW Ombudsman

food safety standards: National standards for the safe preparation and handling of food, from Food Standards Australia New Zealand www.foodstandards.gov.au


**How laws & standards relate to your duty of care**

Where a section of a law or set of standards covers a particular aspect of youth work practice, it is a very good guide to your duty of care. It is a very good guide, but not an exact guide, because it is possible (though uncommon) for a court to find that, in a particular situation, the standard of care in the law or standard was not sufficient, and your agency should have exceeded that minimum required.

Some laws, including privacy laws and anti-discrimination laws, effectively put limits on how you fulfil your duty of care. This is because legislation (an act of parliament) overrides your common law duty of care if the two are in conflict.

Similarly, some standards and guidelines may limit how you fulfil your duty of care. Standards which require you to allow clients:

- privacy
to make their own decisions (sometimes called dignity of risk)
- socialising & recreation
as normal a life as possible,

require you to balance safety (duty of care) with these other needs of clients.

**Client confidentiality & privacy laws**

Client confidentiality has long been an ethical principle in welfare work and youth work. These days it is required by law.

The youth work sector in NSW is very committed to the principle and reality of client confidentiality. However many youth workers are uncertain about when they can and should disclose confidential information on safety grounds. These dilemmas can be complex because they involve privacy law, duty of care and sometimes other legislation, as well as ethical issues.

More on privacy & confidentiality

Privacy & confidentiality dilemmas

Privacy & confidentiality in NSW youth & welfare agencies

More on duty of care & ethics in NSW youthwork

Duty of care in NSW youth & welfare services

Notes

Published: 2006. Opinions are the author's and not necessarily YAPA's.

Applicable to NSW youth services (non-government agencies & local councils) providing accommodation, welfare, social or recreation services to young people. May not be consistent with laws and guidelines in, schools, out-of-home care or health services. "young people" - aged roughly 12-25 years old (unless stated otherwise).

Be careful! YAPA and the author took reasonable care to ensure that this information is correct. However government regulations, laws and standards are complex and changing constantly. The author/s have no health, occupational health and safety, or legal qualifications (unless stated), and information provided is general - it is not specific legal or professional advice. Do not rely on it - check with other publications and authorities and if necessary get qualified legal or professional advice for your situation.

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