



DUTY OF CARE POLICY

Legal Background

- “Duty of care” is an element of the tort of negligence. In broad terms, the law of negligence provides that if a person suffers injury as the result of the negligence of another, they should be compensated for the loss and damage which arises from the negligent act or omission.
- In order to successfully bring a claim in negligence for compensation for an injury, a person must establish, on the balance of probabilities, that:
 - a duty of care was owed to the person harmed at the time of the injury
 - the risk of injury was foreseeable
 - the likelihood of the injury occurring was more than insignificant
 - there was a breach of the duty of care or a failure to observe a reasonable standard of care
 - this breach or failure was a cause of the injury.
- The fact that a duty of care exists does not of itself mean that a school will be liable for an injury sustained by a student. In order for the child to succeed in a negligence claim, all of these elements must be established.
- From 1 July 2017, an additional duty of care will exist for any organisation in Victoria that exercises care, supervision or authority over children, including schools. This duty of care will establish a presumption of liability, such that these organisations will need to prove that they took “reasonable precautions” to prevent child abuse, if they are to successfully defend a legal claim. The new duty does not change existing duties that schools and teachers already have, but instead reinforces the importance of ensuring that schools take reasonable precautions to minimise the risk of child abuse.

PURPOSE

The purpose of this policy is to explain to our school community the non-delegable duty of care obligations that all staff at Tarneit Rise Primary School owe to our students and members of the school community who visit and use the school premises.

To assist school staff to understand how to meet their legal duty of care to students.

DEFINITION

“Duty of care” is a legal obligation that requires schools to take reasonable steps to reduce the risk of reasonably foreseeable harm, which can include personal injury (physical or psychological) or damage to property. The reasonable steps that our school may decide to take in response to a potential risk or hazard will depend on the circumstances of the risk.

POLICY

Our school has developed policies and procedures to manage common risks in the school environment and to support the school's duty of care including:

- Yard Duty and Supervision
- Bullying Prevention and Response
- Excursions (Including Camps)
- First Aid for Students & Staff
- Child Safe Standards
- Health Care Needs
- Incursions (Safety of Students Working with External Providers)
- Emergency & Critical Incidents Management
- Volunteers in Schools
- Visitors to the School
- Working with Children(Suitability) Checks
- Protecting Children – Reporting and Other Legal Obligations
- Occupational Health and Safety

All staff must take reasonable steps to reduce the risk of reasonably foreseeable harm to students.

All staff must take reasonable precautions to minimise the risk of child abuse by an individual associated with the school.

The requirement to take reasonable steps to reduce the risk of reasonably foreseeable harm, continues even when another party is involved (for example, a third-party providing services for an excursion or school camp).

In some circumstances, the school's duty of care will extend beyond school hours and outside of school grounds.

Principals, teachers and other staff working with students must take reasonable steps to minimise the risk of reasonably foreseeable harm, including by:

- providing suitable and safe premises
- providing an adequate system of student supervision
- undertaking risk assessments for school activities and events
- implementing strategies to prevent reasonably foreseeable injuries, whether physical or psychological, to students (including injuries suffered as a result of bullying)
- ensuring that appropriate medical assistance is provided to a sick or injured student
- ensuring the school complies with the Child Safe Standards
- taking other reasonable precautions to minimise the risk of child abuse by an individual associated with the school
- implementing relevant Department and local school policies
- managing employee recruitment, conduct and performance

This duty of care is non-delegable, meaning that it cannot be assigned to another party. However, this does not mean that only one person holds a duty of care to a particular student at any one time. Multiple staff may have a duty of care to the same student, with differing

responsibilities and roles to play in relation to the school discharging its overall duty of care. The precise scope of each staff member's duty of care may be different.

For example, a Principal is not required to personally supervise every student at lunchtime to discharge their duty but instead is responsible for establishing and monitoring a system for supervision that is shared amongst staff. Another staff member may be responsible for preparing the yard duty roster and each staff member rostered onto yard duty will have a duty of care to take reasonable steps in relation to any foreseeable risks to students arising at lunchtime which may include:

- monitoring specific students where there are known risks
- generally monitoring all students and intervening where there is inappropriate student behaviour
- responding to accidents and taking appropriate measures to follow up any incidents that have occurred, which may involve ensuring that the incident is reported to another staff member with responsibility for further action

Duty of care to students outside the school

In some circumstances, the duty of care owed by school staff will extend beyond school hours and outside of school grounds. Whether the duty extends outside of school hours or outside school grounds will depend on all the circumstances of each individual case, and the school staff members' knowledge of any reasonably foreseeable risks of injury.

For example, in some circumstances the Department may be liable for injuries to students in the playground before school begins for the day if they occur during the period of time for which the school yard is supervised.

Staff understand that school activities involve different levels of risk and that particular care may need to be taken to support younger students or students with additional needs. Our school also understands that it is responsible for ensuring that the school premises are kept in good repair and will take reasonable steps to reduce the risk of members of our community suffering injury or damage because of the state of the premises.

School staff, parent/carers and students are encouraged to speak to the Principal to raise any concerns about risks or hazards at our school, or our duty of care obligations.

External Providers

Staff at our school acknowledge that, as our duty of care is non-delegable, we are also required to take reasonable steps to reduce the risk of reasonably foreseeable harm when external providers have been engaged to plan for or conduct an activity involving our students. The *Visitors to the School Policy* and *Camps & Excursions Policy* include information on the safety and care of our students when engaged with external providers. Our school also takes steps to ensure student safety when they are engaging in off-site workplace learning programs with external providers, such as when students are participating in work experience, school-based apprenticeships and traineeships, structured workplace learning and any other workplace learning program involving external providers. Our school will follow all applicable Department of Education and Training policy and guidelines in relation to off-site learning and will ensure

that the safety and welfare of the students engaging in these activities is paramount. The Department's guidelines in relation to Workplace Learning are available at the following link:

<https://www.education.vic.gov.au/school/principals/spag/curriculum/pages/workplace.aspx>

Evaluation

This is a mandatory policy and was first developed in this format in September 2019, updated in March 2020 and again in July 2020, will be reviewed as part of the school's three-year review cycle or if guidelines change (latest DET update mid-June 2020). The template updated in late April 2019.

<u>Ratification Date</u>	<u>Review Date</u>	<u>Policy Number</u>	<u>Version Number</u>	<u>Date Produced</u>
Sept 2020	2023	28	2	September 2017

Reference:

<https://www2.education.vic.gov.au/pal/duty-of-care>

Further information and resources

- School Policy and Advisory Guide: Duty of Care
 - In addition to the above policies, please refer also to the school's *Diabetes Management Policy*, *Health Care Needs Policy*, *Anaphylaxis Management Policy*, *Asthma Management Policy*, *Epilepsy & Seizure Policy*, *SunSmart Policy*, the *Emergency & Critical Incident Management Policy* and the *Reporting & Managing School Incidents (Including Emergencies) Policy* all of which relate to the school's duty of care.