

Duty of Care

Procedure



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1 Context

Schools operate within a context of increasingly complex legal responsibilities. While it is beyond the scope of this document to cover every aspect of a school's duty of care responsibilities, it is intended to provide guidance for all Catholic school principals and staff in managing their obligations with regard to duty of care.

2 Scope

This procedure applies across Catholic Education South Australia (CESA). It is recognized that it is beyond the scope of this Procedure to cover all aspects of legal responsibilities; however, the Procedure is intended to provide direction for Catholic School principals and staff.

Please note: While every effort has been made to provide accurate information in this document it should not be viewed as a document offering expert opinion about the interpretation of the law. It is also important to note that laws are constantly being amended and extended to account for an ever changing society. While these procedures will be amended and updated periodically, schools should keep abreast of current issues and changes to the law via the Circulars and seek advice where necessary.

3 Policy Supported

These procedures support the SACCS Duty of Care Policy (2020).

4 Procedure

The nature and extent of the duty of care will vary according to the circumstances and involves as consideration of a range of factors including:

- the age, ability, maturity and history of the students involved
- the probability that the harm would occur if care were not taken
- the likely seriousness of the harm
- the burden of taking precautions to avoid the risk of harm
- the social utility of the activity that creates the risk of harm.

4.1 Elements of Duty of Care

4.1.1 Negligence

The concept of negligence and the remedies which flow from the breach of a duty of care rest on establishing four key elements:

- that, at the time the injury occurred, the teacher or school owed the student a duty of care;
- that the school failed to exercise the standard of care which is expected in those circumstances;
- that the student suffered some actual injury; and
- that the student would not have suffered the injury but for the teacher's or school's failure to exercise the required standard of care.

4.1.2 Vicarious Liability

Vicarious liability refers to an employer's liability for the negligent acts of its employees including:

- employee acts authorised by the employer or
- unauthorised acts so connected with authorised acts that they may be regarded as modes, albeit improper modes, of doing an authorised act.

It is especially important to avoid any activities with students which are not approved by the school. This particularly includes activities outside of school hours. Teachers are covered by insurance for injuries to students which happen "in the course of the teacher's employment". This means for 'school related activities'. In order to ensure insurance cover, all activities must strictly be within the course of employment duties.

4.1.3 Non-delegable Duty

Schools owe their students a non-delegable duty to ensure that reasonable care is taken for ensuring their safety. This means that the school authority itself is under a direct personal obligation to ensure that reasonable care is taken, and as such cannot avoid liability by saying that it delegated that duty to someone else.

This duty of care may be breached in the following circumstances:

- negligent hiring;
- negligent training;
- negligent supervision;
- failure to terminate employment;
- failure to provide counselling;
- failure to investigate allegations; and
- failure to report abuse.

A school must take reasonable steps to minimise, if not eliminate risk, harm or the opportunity for abuse by those to whom the school has delegated its duties and functions. Accordingly, schools must ensure:

- the engagement of reliable, carefully screened, and properly trained employees, volunteers and contractors;
- the provision of suitable and safe premises;
- an adequate system for the monitoring of employees, volunteers and contractors; and
- an effective system for the prevention and detection of sexual abuse.

Case Example

Commonwealth v Introvigne (1982) 150 CLR 258

This case involved a student at an ACT public school being injured when swinging on a flagpole while unsupervised. While a school will owe a duty of care to its students, the question was whether the Commonwealth owed a duty.

At the time of the injury, the Commonwealth had entered into an arrangement with the New South Wales Department of Education (**NSW**) where NSW was responsible for the appointment and control of the teachers as well as the running of the school and its maintenance. All the teachers were employed by NSW and the Commonwealth was not able to exercise control over them.

It was held that, despite the above arrangement, the Commonwealth had breached its duty of care which is not delegable and the Commonwealth was held to be liable for the injury.

4.1.4 Contributory Negligence

Courts are reluctant to attribute contributory negligence to students. If they do so decide, the amount of damages payable by the school, is reduced to the extent to which the plaintiff's own carelessness contributed to the injury. The court assesses this by asking itself whether a student of that particular age and experience could reasonably be expected to have behaved any more carefully.

4.1.5 Occupier's Liability

As a general proposition, schools are responsible for ensuring that the premises are reasonably safe for visitors to enter. Factors that the Court considers in determining liability of an injury sustained on school premises by any type of 'visitor' include:

- the gravity and likelihood of probable injury;
- the circumstances of the entry on to the premises;
- the nature of the premises;
- any knowledge which the school has or ought to have of the likelihood of persons being on that part of the premises;
- the age of the visitor;
- the ability of the visitor to appreciate any danger; and
- the burden on the school of eliminating the danger or protecting the visitor from the danger, as compared to the risk of danger to the visitor.

Schools must ensure that corridors, pathways and the like are clear of obstacles, and that ground surfaces are even in areas where visitors are reasonably likely to go.

4.1.6 Educational Negligence

Educational negligence occurs when a student suffers harm as a result of negligent or incompetent teaching. Over time there has been an increasing focus on the legal environment in which teachers operate. The idea that teachers or school authorities could be held liable for educational negligence is a burgeoning one.

The government and community continue to demand more accountability in all forms, and the teaching profession is not immune. The Courts have long regarded teachers as professionals. As such, it is arguable that a student who suffered from incompetent teaching or advice, and sustained an injury as a result, could potentially bring a civil action against that teacher or the teacher's employer.

4.2 Duty of Care in practice

4.2.1 Supervision at/around school

There are no definitive answers to the issue of supervision and what might be deemed to be adequate will ultimately be determined on the individual circumstances of each matter.

a) Yard Supervision

While a school is open, it has a duty to provide adequate supervision at all times. What is deemed to be 'adequate' will depend on the circumstances, the size of the school, and the ability of the supervisors to access all areas where the students are gathered or playing.

It is important that yard supervision duty is undertaken diligently and in a timely manner. For example, staff on duty must be on time and actively and vigilantly patrol the designated area. It is essential that they do not leave the area if the next staff member fails to arrive. Schools are advised to develop a process to remedy this situation if the need arises.

Education Support Officers (ESO) may do yard duty if:

- the Principal has determined that the ESO is suitable (e.g. an ESO who works in an office remote from students may not be suitable because students may not be accustomed to taking direction from that person);
- suitable training has been given, specifically with regards to duty of care obligations;
- the ESO has a clear understanding of the school's policies in relation to student behaviour and conduct;
- the ESO is not the only person on yard duty. There must also be a teacher, either on duty as well or in the near vicinity, to be called upon if required; and
- It has been detailed in their Position Information Document (PID).

b) Before and After School

Whenever students are allowed to enter or remain on the school grounds the school is obliged to provide adequate supervision. As well, if children are staying after school and using the facilities, the school is obliged to provide adequate supervision.

It is essential therefore that schools inform parents and students about the times when supervision will be provided. This will not protect schools absolutely from a claim outside of these times. Each case will depend on the individual circumstances.

If students are involved in after school sport or rehearsals, the school must supervise those students until they are collected (even if this is extremely inconvenient for staff when parents are late). Similarly, if the time for after school supervision has expired but it is clear that students are still in the area, staff cannot just walk away leaving students unsupervised.

Case Example

Geyer v Downs (1977) 138 CLR 91

The decision dealt with a school which opened its gates prior to the school day commencing. The gates would be opened around 8:00 – 8:15am with school not starting until 9:00am. In opening the gates early, the Principal had said this was to allow teachers to enter and for deliveries that needed to be made. However, students would also arrive at the school from around 8:30am without supervision until 9:00am. The Principal was aware of this and provided instructions to the students not to play or run around before the school day had started. One morning, a student was struck in the head with a softball bat on her way to school and suffered injuries.

It was held that the school had breached its duty of care by allowing students into the school unsupervised. Providing an instruction to students not to play before the start of school was not sufficient in avoiding this finding.

c) Students travelling to and from school

Depending on the particular circumstances, a school may also have a legal duty to ensure the safety of its students while they are journeying to and from school and school related activities. So long as the school is able to exercise authority and control over its students, it will be incumbent upon it to take reasonable steps to protect its students against the risk of injury. Factors, such as the geographical distance from the school, the nature of the activities which give rise to the risk of injury, the parties involved, the type of transport being used and the safety of the immediate surrounds are all important considerations when determining the standard of care owed.

It is important that schools are alert to possible dangers which students may face on the journey home and that they warn students and their parents of any foreseeable dangers. Schools must be aware of the main routes their students take to and from school, the drop off and pick up points, and the conduct of their students while waiting for transport. Assessing any reasonably foreseeable dangers and implementing preventative measures in these situations may include simple steps such as providing supervision at appropriate gathering spots and warning students and parents of potential dangers.

Case Example

Roman Catholic Church, For the Diocese for Bathurst v Koffman (1996) Aust Torts Reports 81-399

In this case, a student left school at the end of the school day. He proposed to walk some 300-400 hundred metres to a bus stop, to board the bus to the suburb where he was living, and then walk to his home. However, the student was injured before he boarded the bus; a student from another school threw a stick at him and injured his left eye.

It was held that the school had breached its duty of care to the injured student and should have been supervising the student's as they left school.

The extent and nature of the duty of the teacher to the student is dictated by the particular circumstances. It does not necessarily end or be limited by the fact that the final bell has rung for the day or that the student has walked outside the school gate.

d) Classrooms and specialist areas

Supervision in the classroom varies with the age of the student and the type of lesson/subject being taught. Clearly, the younger the students the greater the duty of care, and clearly the more dangerous the teaching situation the more care to be taken by the teacher. Greater duty of care must also be in place with students who may lack the capacity for self-regulation.

It is never prudent to leave students unsupervised in potentially dangerous situations. Much closer supervision is demanded in science laboratories, home economics kitchens, technical workshops and art and craft rooms. Students, especially younger secondary students, are never to be left alone in these classrooms if there is an intrinsic danger in the situation, e.g. an inexperienced class using a band-saw, mixing chemicals or using boiling fat in cooking.

For further information on specialist areas, information should be sourced from documents such as procedures on plant management, hazardous chemical procedures and chemical safety guidelines found in the [Catholic Safety, Health and Welfare](#) website.

e) Out of School Hours Care Services (OSHC)

Staff employed in Out of School Hours Care also have a duty of care to those they supervise. It is crucial that they are appropriately trained and have the requisite knowledge regarding their responsibilities towards the safety and welfare of their charges. These duty of care obligations include mandatory notification responsibilities.

f) School Boarding Houses

Boarding house supervisory staff have a particular duty of care towards students because of the responsibility which they have to supervise and care for students in the absence of their parents (in loco parentis). While generally, the standard of care required is at least the standard of a reasonable and prudent parent, persons professing special skills must use these skills to the level which could reasonably be expected of a skilled person.

Boarding schools have a duty to ensure that they institute a system such that its employees do not come into personal contact with a child or other vulnerable person unless supervised or accompanied by another adult.

All of the other care and supervisory issues raised in this document are also relevant to boarding house staff. Because of the closer daily contact and “in loco parentis” role that staff in boarding houses have, it is especially important that they are fully aware of and appropriately trained in their duty of care obligations.

4.2.2 Supervision of excursions

The standard of care to be exercised on excursions is arguably higher than at any other time. Frequently students are involved in inherently more risky situations and often in unfamiliar environments. The risks therefore are greater and the foreseeability of injury more likely.

a) Local Excursions

It is essential that parents give a fully informed and separate consent to all excursions.

b) Interstate and Overseas Excursions

Duty of care obligations are elevated when students are involved in interstate or overseas excursions because in these circumstances, schools are responsible for students 24 hours a day in distant locations. It is essential that parents give a

fully informed consent to all excursions. Extended interstate or overseas excursions require very detailed itineraries and consents.

For a detailed explanation on this topic, please refer to:

SACCS Camps, Excursions, Sporting and Adventure Activities Policy (2020)

SACCS Camps, Excursions, Sporting and Adventure Activities Procedure (2020)

SACCS Student Overseas Travel Excursions Procedure (2020)

c) Excursions to venues controlled by others

As previously discussed, schools have a non-delegable duty to ensure the safety of their students. As such, when a school organises activities for its students to take place on premises not owned or controlled by it, the school, in addition to the owner of the premises, may be liable for any accidents or injury occurring on such premises. While the school may not have control over the premises themselves, it does have control over its students. The school must decide if it is safe for the students to visit the premises at all, and how many students can safely visit at one time.

Accordingly, prior to any external school excursion, schools must:

- complete a thorough risk assessment
- inspect the premises to ensure they are safe and suitable;
- ensure that advice is sought in relation to any form of waiver requested or required by a recreational service provider;
- obtain written confirmation of the qualifications and experience of those involved in organising and conducting the activity;
- ensure all CESA protocols associated with engaging Third Party Providers are adhered to;
- ensure that the owner of the premises has suitable public liability insurance.

It is important to remember when dealing with recreational service providers that amendments to legislation now limit the liability relating to the provision of recreational services unless it is established (by applying the general principles set out in section 34 of the Civil Liability Act 1936) that the reckless conduct of the supplier caused the injury.

Where schools take their students to other premises, they discharge their duty of care if they know the premises and if the premises are apparently safe, and if they know that the premises are staffed by competent and careful persons. They further discharge their duty if they permit their pupils there to use equipment which is apparently safe and is under the control of competent and careful persons who supervise the use of such equipment.

Consent forms should not include a waiver clause that states the site or CESA cannot be held responsible for an accident or injury to the child or young person. Where a school is required to sign waiver forms for children or young people in order to secure a booking for a camp or excursion, please contact the CESA People, Leadership and Culture section for advice. In addition, please note:

- A school or school staff member cannot and must not sign a waiver on behalf of a child or parent;
- An individual teacher asked to sign a waiver for their own personal participation in an activity can do so, but needs to make their own decision about this; and

- A school should not sign a general waiver which might affect the School's rights and responsibilities without first seeking legal advice, to do so may have adverse consequences for insurance.

4.3 First Aid and Health Management

4.3.1 General legal obligation

Teachers and various Education Support Officers have a special and primary duty to the students in their care. In addition to the requirement to refrain from doing things that might lead to a student being injured, they are also required to take positive steps towards maintaining health and safety. An employee could be found to be negligent if assistance was not provided to an ill or injured student. The duty of care owed by education personnel is that of a 'reasonable professional' and will be governed by factors that include:

- the age of the student;
- the student's individual capabilities, including intellectual and physical impairment;
- potential dangers;
- the degree to which injury, or malaise due to illness, is predictable.

4.3.2 Responsibilities of Principals

School principals must ensure that staff, students and their families understand and follow the school's health support procedures. It is the principal's responsibility to:

- alert families to the need for health care plans if students need individual support;
- develop, monitor and review worksite health support procedures;
- manage health support planning;
- manage confidentiality.

4.3.3 Responsibilities of school staff

A staff member's first duty is to the students in his or her care. For students with health support needs, this means the staff member:

- helps families understand health support planning procedures at the school;
- provides basic first aid;
- facilitates individual health and personal support plans;
- develops learning and care programs which accommodate health and personal support plans;
- offers alternative programs where participation in the planned program could place students with health issues at risk;
- supports a range of curriculum access options (for example, distance or hospital-based schooling with support from peers through the enrolling or local school);
- reports to parents and guardians any observations which could indicate health-related concerns.

All staff must take reasonable care to protect their own health and safety and that of others on campus. In providing student health support they must, therefore:

- become familiar with policies and procedures that guide work performance;
- follow instructions related to health and safety;

- accept responsibility for safe working conditions within their control, including the responsibility to notify their employer if their own health, including their infection status, poses any risk to others;
- safeguard the privacy of health information, using privacy principles;
- use equipment provided for health and safety purposes;
- apply standard precautions against transmission of infections;
- perform tasks in line with the training received.

4.3.4 Responsibility of Parents

Parents and guardians are primarily responsible for the health and well-being of their children. It is the responsibility of Parents and guardians to:

- provide relevant health care information;
- liaise with health professionals to provide care plans which create minimum disruption to learning programs;
- assist students for whom they are responsible to self-manage, as much as is safe and practical, their health and personal care needs.

4.3.5 Responsibility of Students

Wherever possible, students are supported to learn responsibility for their own health and personal care needs in non-emergency situations. Children in the early years will need supervision of their medication and other aspects of health care management. Older children can take responsibility for their own health care, in line with their age and stage of development and capabilities. Self-management follows agreement by the child or student and his or her family, the school and treating health professionals.

4.4 Work Health and Safety

Safety in the workplace is everyone's responsibility, but those in leadership roles have primary responsibility. The procedures contained in the [Catholic Safety, Health and Welfare](#) website are designed to provide schools the basis for compliance with relevant legislation and the Exempt Employer Workers Compensation Licence.

The following are a selection of areas that relate specifically to schools' Duty of Care.

4.4.1 Extreme Weather

Schools are required to formulate their own policy(ies) with regard to extreme weather, including bushfire, high winds and electrical storms.

Principals must ensure they have considered the potential hazards for all locations and situations impacted by inclement weather conditions. They should monitor, or delegate someone to monitor, daily weather forecasts (eg [Bureau of Meteorology](#)) and identify any potential inclement weather risks.

During and following a period of inclement weather.

- consider
 - the health and safety risks to employees, children/young people before allowing them to undertake outdoor activities.
- look out for
 - tree debris such as leaves, nuts and branches that might pose a slip or trip hazard
 - damaged tree limbs and branches that may fall
 - wet floors and stairs.

- monitor
 - severe weather danger warnings.

During hot weather:

- arrange
 - work or learning tasks to maximise time in the shade or, if possible, relocate indoors
 - start, end and break times to maximise the cooler parts of the day
- monitor
 - the [South Australia Country Fire Service's](#) fire danger warnings, particularly for schools in high danger areas.

4.4.2 Sun Protection and Hot Weather

All schools are required to formulate their own policy with regard to sun protection and hot weather in effect for school Terms 1, 3 and 4 and whenever ultra violet (UV) radiation levels reach 3 or above. Such policies are determined in consultation with the school board and parents. All parents must be informed of these policies.

Utilizing the resources of [SunSmart](#) website is advised. Sun protection practices include:

- use of sun protective clothing and hats
- use of sunscreen application
- employing [SunSmart](#) behaviours
- the availability of shade in outdoor areas
- informing the school community including employees, students, parents and volunteers of the sun protection policy
- Encouragement to minimise exposure to the sun
- rescheduling outdoor activities to those hours of the day when UV levels are at their lowest; and
- encouraging students to drink water throughout the day to improve fluid intake, particularly on hot days.

Refer to the Cancer Council SA SunSmart Schools website for information on developing a sun protection policy for different age groups:

- [Early childhood](#)
- [Primary schools and OSHC](#)
- [Secondary schools.](#)

4.4.3 Building Works

Schools undertaking refurbishment, alterations or new building works must ensure that all work health and safety, building code and statutory requirements are met. The Catholic Education Office's Planning and Development Section are available to assist in this.

4.4.4 Safety in School Working Areas

All schools must ensure that all classrooms, laboratories and preparation rooms are safe for all students, staff and visitors.

Each school formulates their own safety policy for areas that contain hazardous substances and equipment. The policy covers:

- storage of chemicals;
- disposal of residue and waste chemicals;
- student behaviour in risk areas;
- protective clothing and body protection;
- safety and first aid equipment;
- emergency evacuation procedures.
- risk management plan.

4.4.5 Risk Management

Risk evaluation is part of the continuing assessment of management responsibilities. Risks may be psychological as well as physical. As part of this, and in adherence to the Catholic Safety Health and Welfare procedures, in the event of an injury, incident or near miss, the Principal is responsible for initiating the following actions:

- consider the welfare of the injured person and any others affected;
- investigate the incident, injury or near miss in consultation with the WHS Coordinator;
- record the incident details on CSH&W Incident Database;
- complete relevant reports (and lodge any applicable claims for any employees involved);
- identify immediate, medium and long term preventative action and implement accordingly;
- review such actions and ensure they are relevant and effective.

4.4.6 Violent Behaviour from Students

Violence can be defined as the unjustified use or threat of use of force. It also includes verbal abuse, particularly in the immediate presence of the victim.

Violent behaviour is unacceptable and can be illegal or criminal. It is covered by a range of legislation including Work Health and Safety, anti-discrimination, equal opportunity, workers compensation and rehabilitation, domestic and apprehended violence orders, criminal law and the common law (including duty of care). These obligations must be foremost in the minds of schools in the development of preventative strategies.

The Courts are increasingly identifying 'hazardous people' in work health and safety cases. These are seen as risks that the employers need to manage. Schools are to consider and implement ways of controlling the potential for violent incidents arising from student behaviour.

Risk control strategies include assessment of students who present with behavioural problems, and dissemination of information about student's dangerous propensities to those who need to know, for their own safety and that of others. Counselling and support for both the perpetrators and those who may be affected must be made available.

The Catholic Education Office's Learning and Diversity Team offers support and advice regarding students behaving in a violent manner. Schools are to contact this team where support is needed in dealing with such issues.

4.5 Accident & Incident Reports

Principals must ensure that reports are prepared for all but very minor incidents or accidents that occur on school premises or during a school organised activity. Reports must be, as far as possible, collated by a senior member of staff who was not involved in the accident. In relation to retention of records, further information can be sourced from the [Records Management Policy](#).

Reports must include all relevant information and documentation. Depending on the scenario, this could include any or all of the following:

- witness statement, including the person injured, if practicable (where this is necessary, be aware that Privacy legislation is applicable, and ensure that witnesses are aware that such statements may be used to defend any possible legal proceedings or any assessment of claims);
- details of supervision arrangements in place at the time;
- staff supervision rosters;
- photographs of the scene;
- sketch plans of the site marking the locations of the accident and position of relevant people;
- details of any previous accidents of a similar nature.

4.5.1 Notifying Parents/Guardians

Parents/Guardians must be informed of any accident or incident involving their children as soon as possible after the event occurs.

Particular attention should be given to head injuries or blows which in some cases may mask a more serious injury that is not easily recognisable. Schools should err on the side of caution and inform parents of any head injuries.

The following information is to be conveyed:

- confirmation that their child was involved in an accident, together with a description of the nature of the accident; and
- details of any injuries sustained; and
- details of any follow up action taken – e.g. first aid, ambulance.

Copies of any correspondence must be kept on the student file. If parents/guardians are initially contacted by phone, a memo of the conversation is to be written down.

Liability for the accident or any opinion as to the legal responsibility for the accident is not to be expressed.

Principals are to be as helpful as is reasonably possible in providing information to students, parents and guardians. However, any request for a copy of the accident report and accompanying documentation, is to be refused until the Principal has received advice through the Catholic Education Office or governing authority. Any person who has made a statement is entitled to have a copy of that statement upon request.

4.6 Student Motor Vehicles

Schools must take steps to avoid reasonably foreseeable risks of injury to all persons on school premises. If a school breaches its duty of care, either by acting in a way

that puts persons at risk or failing to prevent a hazard or failing to adequately supervise, then it may be liable for damages.

The law also imposes a duty of care on drivers of vehicles to take care of the safety of passengers and other road users and pedestrians.

While schools cannot prevent students from driving to school, they do have a duty to ensure that parental consent is obtained from all relevant parents or guardians for student drivers transporting other minors.

As a general rule, principals are not to allow students to transport other students in private vehicles in connection with any school activity.

Information in SACCS Camps, Excursions, Sporting and Adventure Activities Procedure (2020) has relevant information about the use of Privately Owned Vehicles and should be consulted.

Cars driven by young people (P1 or P2 licence holders) should only be used as a last resort and only in exceptional circumstances where sites cannot provide a bus service or engage the support of adult fully licenced volunteers and the excursion could not occur without the offer of transport. The school must obtain a parent's written authority before any student is allowed to drive to excursions. Student drivers must not be permitted to carry any other students except with the express permission in writing of the parents AND parents of passengers.

Schools must ensure that their policies reflect the latest road laws for P1 [Licence holders](#) which include:

- No driving between midnight and 5am; and
- No more than one passenger aged 16-20 at any time of the day.

In certain situations, the duty of care will extend to cover students travelling to and/or from home to school or school organised activities. For example, if students are required to make their own way to a school excursion, it is the school's responsibility to ensure that arrangements are made to protect students from foreseeable risks.

Schools are to have well defined policies regarding students driving themselves and other students to and from school, excursions and the like.

Following is a list of essential criteria that all policies must address:

- drivers are expected to obtain written permission by the Principal and parents prior to driving to school;
- students should not use their own vehicle going to and from school organised activities during school hours, except in specially agreed exceptional circumstances. Schools should provide adequate transport for all parties concerned;
- where private vehicles are used to transport students to school organised activities, specific written consent should be given by all relevant parents, including parents of student drivers and passengers. The parents of the passengers should be aware of who the driver is and the status of that person's licence;
- student drivers' licences should be checked for authenticity and sighted by Principals or delegates;
- students with Learner's Permits should not be allowed to transport other students under any circumstances;
- registration number and make of vehicle being driven should be provided;

- vehicles should be parked in designated parking areas only (note that the school is not under an obligation to provide for parking space on school grounds);
- students should be prohibited from accessing vehicles during school hours, irrespective of where the vehicle is parked, unless specific prior approval has been given;
- students should not use their cars as a place for recreation or leisure;
- leave passes must be obtained before leaving school grounds in student vehicles;
- parents/guardians should be advised that the school takes no responsibility for damage to any vehicles left on school premises and that drivers park on school premises at their own risk.

Personal responsibility:

- the owner/driver is responsible for ensuring they carry the relevant driver's licence, that the vehicle is appropriately registered and insured, and roadworthy, and that the number of passengers does not exceed the number of seatbelts;
- any claims arising out of accident or injury would be dependent upon the owner of the vehicle having the appropriate insurance and on the application of common law principles. The person in charge of the vehicle is responsible for ensuring that all those travelling in the vehicle are using the appropriate restraining device;
- any child under 8 must be restrained in the rear seating position first. A front seat should only be used by a child when all of the rear seating positions are used by other children. In these circumstances, the largest child should be seated in the front;
- drivers must observe applicable speed limits on and around school grounds;
- consideration must be given at all times to neighbouring residents of the school, and
- students are expected to act responsibly at all times, adhering to all road traffic rules.

Breaches/Consequences:

- parents should be encouraged to support the school in enforcing its policy;
- the usual school procedures should be invoked if breaches of the driving policy occur

Further information and proforma consent forms can be found in the SACCS Camps, Excursions, Sporting and Adventure Activities Procedure (2020).

4.7 Physical Education and Sport

Schools and school staff can be held liable for injuries caused by sporting activities.

4.7.1 Negligence of the school authority

There exist a number of ways that liability for negligence on the part of the school authority could arise in the school sporting context therefore school authorities and schools themselves must implement an adequate system to ensure that students are not exposed to unnecessary risk of injury.

4.7.2 Condition of School Grounds

A school may be liable if an injury is sustained as a result of the condition of the school grounds upon which a sport is played. A school should ensure that its fields

and equipment pose no danger to students. It also has a duty to ensure that other sporting grounds at which its students play are safe. A failure to intervene if it is aware that its students are playing on sub-standard surfaces could result in a claim of negligence against the school. Likewise, a school owes a duty to students from other schools who use its school's facilities.

4.7.3 Negligence of Teachers/Sports Coaches

Schools should also ensure that they are familiar with and strictly comply with any guidelines provided in relation to teacher/student ratios for various sporting activities. These can be found in SACCS Camps, Excursions, Sporting and Adventure Activities Procedure (2020).

4.7.4 Indirect Sporting Injuries

A school may be liable because of the negligence of one of its teachers or sports coaches.

For instance, if a teacher is aware that a particular student is prone to violent and aggressive behaviour, it may be negligent not to protect other students from that student. It may be negligent not to remove the student from the game at the first sign of aggression.

Sports medical experts are increasingly issuing warnings about the dangers of indirect injuries to students and, in particular, overuse injuries. Overuse injury is damage to the body due to prolonged or very repetitive exercise.

Such injuries are predominantly attributable to poor coaching methods. Students, because of their age and the stresses on the body of rapid growth are particularly prone to overuse injuries.

Overuse injuries are capable of causing significant long term and permanent injury to students. Students with particular sporting talent often also exhibit significant psychological injury from the long term effects of overuse injuries. Many of these injuries do not become fully apparent until the child reaches adulthood. It is imperative that schools ensure that up to date training is available and attended by all of their sports coaches to protect students from injuries of this type.

4.8 Safety and Welfare

4.8.1 Playground Safety

There are a number of Australian Standards which apply to school playgrounds. The Catholic Education Office's Planning and Development section is able to offer advice.

Some more information can be at:

KidSafe SA's factsheet on [playground surfacing](#), and also [Play Australia](#)

4.8.2 Food Safety

Schools have a duty of care to produce safe food, and an obligation to comply with the Food Safety Standards. School canteens, before/after school care programs, vacation programs, boarding houses, fundraising events and fetes where food is provided are all affected by the Food Safety Standards.

The [Food Safety Standards](#) can be located online via SA Health.

4.8.3 Sexual Harassment and Bullying

Sexual harassment is a form of sex discrimination. A person who is being harassed may suffer psychological, mental or physical disorders. This is particularly the case with younger people.

Bullying has both long term and short term effects on victims. The long term may range from mental and psychological damage to personal loss and loss of employment opportunities.

Sexual harassment and bullying, in addition to constituting possible offences under the criminal law can also possibly give rise to a civil claim for damages.

As canvassed in sec 4.1 “Elements of Duty of Care” above, a school authority can be found liable for damage caused to its students due to harassment, violence and bullying through its own negligence or that of its employees or by breaching its non-delegable duty of care owed to its students.

Australian Courts have recognised schools’ liability where negligent supervision gives rise to an emotional or physical injury due to criminal behaviour of students in the classroom. Whether liability is imposed will depend not only on how the injury or harm was inflicted, but also how foreseeable it was, how grave the injury was, and whether the educational authority has taken reasonable steps to prevent the harm.

4.9 Child Protection and Mandatory Notification

Principals must ensure that their school is a place where children can be and feel safe. The [Catholic Archdiocese of Adelaide Safeguarding Children and Young People Policy](#) together with the [Child Safeguarding Policy of the Port Pirie Child Protection Council](#) outline the main tenets of child safety and protection for children in Catholic Schools in SA. Catholic Schools have an obligation to:

- protect children
- provide a secure, safe environment where children can be safe and feel safe
- intervene on behalf of children
- actively work towards empowering children
- ensure the principles of care, protection and safety are implemented.
- Ensure school staff are educated in the area of child protection and mandatory notification. Schools are to provide protection and appropriate child protection curriculum for students.

SACCS’ procedure for [Reporting Harm of Children and Young People \(2020\)](#) is a main resource in the area of mandatory notification.

4.9.1 Disclosures made in confidence (including to Counsellors)

If a student discloses to a staff member something that puts their or someone else’s safety or welfare at risk, for example that they are suicidal, or that they are planning to run away from home, then the staff member’s overriding duty of care towards that student demands that they immediately inform the Principal or delegate who should then contact the relevant parents/guardians about their concerns. Ideally, this should be done with the consent of the student, if at all possible, so that positive relationships can be maintained.

These situations often arise in a counselling session. Notwithstanding the counsellor’s obligations about confidentiality, their duty of care towards the student may demand that the confidence be broken.

The position under Australian law at present is that counsellors are not in any special class of persons to whom different rules apply with respect to duties of care or confidentiality obligations.

Counsellors therefore are subject to the same duties and obligations as other employees of a school, namely that they have a duty of care to students under

negligence law, they have mandatory reporting obligations under child protection legislation, and any records they create in the course of their employment are, absent any other agreement, the property of their employer.

If counsellors make promises to students that they will keep something “confidential”, and they then make some disclosure, this could expose the counsellor to being sued personally for breach of confidence at common law.

Counsellors can always assure students that information divulged will be treated sensitively and respectfully with due regard for the dignity of the person.

However, counsellors must be aware that no promise of absolute confidentiality can be made in relation to information imparted in a counselling session. This is because a duty of care matter or a mandatory notification issue may arise that requires action on part of the counsellor. Furthermore, counsellors are obliged as employees of the school, to surrender notes or provide information, if directed to do so by their employer.

No staff member should attempt to provide counselling to the student unless they have the requisite level of counselling skills in that particular area.

4.9.2 Dangerous risk taking behaviour observed out of the school environment

If a staff member observes a student partaking in dangerous risk taking behaviour out of the school environment then, in certain circumstances, there may be an obligation to report that to the Principal who should then contact the relevant parents/guardians. Each situation will be different, and a judgment call will need to be made.

It is for this reason that staff should maintain appropriate professional boundaries at all times when dealing with students – and accordingly schools strongly discourage staff from attending any student parties and the like. If a member of staff has contact with a student outside of the school environment, and can be reasonably seen to be acting in his/her capacity as a staff member by that student, then the duty of care towards that student may be activated.

4.9.3 Endorsing groups out of the school environment

Schools should avoid any language that suggests that an external group is endorsed or recommended by the school (eg a local dance club, community sports club, specialist coaching etc). If the school newsletter is used for the promotion of a group it should be made clear that the group is not affiliated with the school. If a decision is made to promote an organisation then the school should do a base line level of due diligence before such promotion. This would involve a minimum checking that the organisation has appropriate child protection safeguards and that it has appropriate insurance in place.

4.10 School Records

School records are to be kept in the manner described in the SACCS Records Management Policy and associated Guides.

Specific information and details can be sourced in the *User Guide A: Records Management* and the *User Guide B: Records Management: Retention Schedule* which applies to all Catholic schools and the Catholic Education Offices (CEOs) in South Australia. These guides apply to records which represent the administrative and educational functions of Catholic schools and the CEO’s providing details of actions and decisions which represent vital assets to support its daily functions and operations. All records are considered the property of the school or CEO, not the member of staff who created or received them.

This section should be read in conjunction with [SACCS Privacy Policy](#) which may be located online.

4.11 Internet use

Individuals and/or the School may be liable for what is written or said in an email message or on the internet, for example through social networking websites. Email and internet communications are neither private nor secret. They may be easily copied, forwarded, saved, intercepted, archived and may be subject to discovering litigation. The audience of an inappropriate comment in an email or other internet communication may be unexpected and extremely widespread.

The Internet, email or messaging should never be used for the following purposes:

- to abuse, vilify, defame, harass, degrade or discriminate (on the grounds of, for example, sex, race, or disability etc);
- to send, assent to receive or store obscene, offensive or pornographic material;
- to discuss or comment on the physical appearance of other persons (whether they receive the message or not);
- to harass any person whether through language, frequency or size of messages;
- to injure the reputation of the School and or the Church in a manner that may cause embarrassment to the employer or the Church;
- to offend the ethos and values of Catholic teachings;
- to spam, spoof or mass mail or to send chain mail;
- to infringe the copyright or other intellectual property rights of another person;
- to perform any other unlawful or inappropriate act.

For further information relating to appropriate use of the Internet can be located in these policies and procedures:

[Policies, Procedures & Guidelines](#) > [ICT Collection](#)

- SACCS Information and Report Handling Guideline
- SACCS Information Security Classification Guideline
- SACCS Information Security Policy

4.12 Early Education and Care Services

It should be noted that schools that operate Early Education and Care Services, like OSHC, Vacation Care, Long Day Care and Pre-schools, are bound by other laws and subject to additional requirements particularly in relation to First Aid and Health Management requirements of staff and notifications involving serious incidents. These laws and additional requirements can be found in the following Acts, Regulations and Frameworks:

- [the Education and Care Services National Law Act 2010](#) and [Regulations](#)
- [the South Australian Education and Early Childhood Services \(Registration and Standards\) Act 2011](#) and the
- [Australian Children's Education and Care Quality Authority's \(ACECQA\) National Quality Framework](#)

Similarly, some staff who support students with a disability (SWD) are required to have training in medication management, continence care, transfer and positioning (TAPS), oral eating and drinking care.

5 Definitions

The school or CEO includes Catholic schools and any associated entities (including committees) and the Catholic Education Offices (CEO) in Adelaide and Port Pirie, as well as sites on which staff or others engaged in duties or activities such as excursions or conference attendance sanctioned by their School or CEO. It includes all the services offered by the school which would cover Students with a Disability, Boarding Houses, Preschools, Long Day Care, OSHC, Vacation Care and supported playgroups (but not Alive Catholic Early Learning Centres).

Staff means staff employed by a Catholic School

Parents means parents and/or guardians.

Duty of Care may be defined as, ‘an obligation, recognized by law, to avoid conduct fraught with unreasonable risk of danger to others.’

6 Related documents/links

This Statement is to be read in conjunction with, and is additional to, any other relevant South Australian Commission for Catholic Schools (SACCS), school or CEO policy, procedure or support document including:

- [SACCS Duty of Care Policy \(2020\)](#)
- [Reporting Harm of Children and Young People \(2020\)](#)
- [Catholic Archdiocese of Adelaide Safeguarding Children and Young People Policy](#)
- [Child Safeguarding Policy of the Port Pirie Child Protection Council](#)
- [SACCS Camps, Excursions, Sporting and Adventure Activities Policy \(2020\)](#)
- [SACCS Camps, Excursions, Sporting and Adventure Activities Procedure \(2020\)](#)
- [SACCS Student Overseas Travel Excursions Procedure \(2020\)](#)
- [SACCS Records Management Policy](#)
- [SACCS Information and Report Handling Guideline](#)
- [SACCS Information Security Classification Guideline](#)
- [SACCS Information Security Policy](#)
- [Protective Practices for Staff in their Interactions with Children and Young People: Guidelines for Staff Working or Volunteering in Education or Care Settings 2017 \(2nd Edition, revised 2019\)](#)
- [Disability Standards for Education 2005](#)
- [Disability Discrimination Act 1992](#)
- [Education and Care Services National Law Act 2010](#) and [Regulations](#)
- [South Australian Education and Early Childhood Services \(Registration and Standards\) Act 2011](#)

7 Further resources and links

The following resources are provided for information and guidance:

- [Catholic Safety, Health and Welfare](#) website
- [Food Safety Standards](#)
- [Play Australia](#)
- [SunSmart](#)
- [My Licence SA Govt](#)
- [Australian Children's Education and Care Quality Authority's \(ACECQA\) National Quality Framework](#)

8 Revision Record

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