

DUTY OF CARE POLICY

1.0 INTRODUCTION

This Duty of Care Policy applies to Diocese of Sale Catholic Education Limited (**DOSCEL**) workplaces, specifically Marist-Sion College Warragul (**Marist-Sion College**).

The duty of care requires DOSCEL employees to take all reasonable steps to reduce risk, including:

- provision of suitable and safe premises to ensure that persons on the premises will not be injured or damaged because of the state of the premises, including things done or omitted to be done on the premises
- taking reasonable steps to reduce the risk of reasonably foreseeable harm
- provision of an adequate system of supervision
- implementation of strategies to prevent bullying
- ensuring that medical assistance is provided to a sick or injured student
- prevention of child abuse by an individual associated with DOSCEL.

Greater measures may be needed for younger students or students with a disability to discharge this duty of care.

The duty of care is non-delegable, meaning that it cannot be assigned to another party.

2.0 PURPOSE

DOSCEL employees are held to a high standard of care in relation to students. This Policy explains the legal duties owed by DOSCEL employees towards students.

3.0 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 a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence.

To successfully bring a compensation claim in negligence a person must establish, on the balance of probabilities, that:

- a duty of care was owed to them at the time of the injury
- the risk of injury was reasonably 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 caused or contributed to the injury, loss or damage suffered.

The fact that a duty of care exists does not mean that DOSCEL will be liable for an injury sustained by a student. In order for the student to succeed in a negligence claim, all of these elements must be established.

4.0 STANDARD OF CARE REQUIRED

Principals and teachers at Marist-Sion College are held to a high standard of care in relation to students. The duty requires principals and teachers to take reasonable steps to minimise the risk of reasonably foreseeable harm, including:

- ensuring that DOSCEL, and Marist-Sion College, comply with the Child Safe Standards
- provision of suitable and safe premises to ensure that persons on the premises will not be injured or damaged because of the state of the premises, including things done or omitted to be done on the premises
- provision of an adequate system of supervision
- implementation of strategies to prevent bullying
- ensuring that medical assistance is provided to a sick or injured student
- managing employee recruitment, conduct and performance
- sharing information with another prescribed Information Sharing Entity (**ISE**) in relation to a child's wellbeing or safety, or sharing information with another prescribed ISE which may help to assess or manage the risk of family violence under the Child Information Sharing Scheme (**CISS**) and Family Violence Information Sharing Scheme (**FVISS**)
- prevention of child abuse by an individual associated with DOSCEL.

Whenever a teacher-student relationship exists, teachers have a special duty of care. Generally, teachers are expected to take such measures as are reasonable in the circumstances to protect a student under their charge from reasonably foreseeable risks of injury.

The nature and extent of this duty will vary according to the circumstances. For example, the standard of care required will be higher when taking a group of preps for swimming lessons than when teaching a group of Year 12s in the classroom.

The important issue in all cases will be what precautions DOSCEL and Marist-Sion College could reasonably be expected to have taken to prevent the injury from occurring. This will involve consideration of the following factors:

- identifying the risk of harm
- 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.

Additionally, any enrolling international students under the age of 18 (who are not being cared for by a parent or suitable relative) are expected to have a comprehensive homestay policy and procedures in place to assess and monitor the suitability of accommodation arrangements.

4.1 Duty of care to students outside the school

The law has established that, in some circumstances, a school's duty (and therefore DOSCEL's duty) will extend beyond school hours and outside of school grounds. The duty will be extended to outside school hours and premises when the relationship between the school and the student requires it in the particular circumstances. For example, in some circumstances, schools may be liable for injury sustained by students in the playground before school begins for the day, particularly if it occurs during the period of time for which the school yard is supervised.

In one case, a non-government school was found liable for injury to a primary student at an unsupervised bus stop approximately 350 metres from the school and located outside a government secondary school. The school knew that a large group of students regularly caught the bus from outside the neighbouring secondary school and that there was a risk of harm. In addition, a teacher from the primary school witnessed the incident but did not intervene. The court found that the teacher-student relationship was still in existence at the time of the injury and therefore the school authority had a duty of care.

Whether the duty extends outside of school grounds therefore depends on all the circumstances of each individual case and the school's knowledge of any dangers.

It is important that schools clearly inform parents when playground supervision will be provided and that no formal supervision of the playground occurs outside those hours. Similarly, some risks outside of school will involve informing parents of bus arrangements and leaving it to parents to make appropriate arrangements for transporting their children to and from school.

There will be other situations in which schools will be under a duty to take reasonable steps to avoid injury. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. If the danger to students is beyond the control of the school, reasonable steps may involve contacting police or issuing warnings to parents.

5.0 NEGLIGENT ADVICE: TEACHERS

Teachers are frequently called upon to advise students. When doing so teachers should:

- limit their advice to students to areas within their own professional competence and given in situations arising from a role specified for them by the principal
- ensure that the advice they give is correct and in line with the most recent available statements from DOSCEL or the school. Careers teachers and coordinators at senior levels should keep contemporaneous notes of advice given to individuals
- avoid giving advice in areas unrelated to their role or where they may lack expertise.

6.0 RELATED POLICES

- Child and Family Violence Information Sharing Schemes Policy and Procedure
- Child Safety and Wellbeing Policy
- Complaints and Grievances Management Policy
- Guide to Reporting Conduct under the Reportable Conduct Scheme
- Pastoral Care Policy
- Whistleblower Policy

7.0 REFERENCES

- Child Information Sharing Scheme Ministerial Guidelines
- *Child Wellbeing and Safety Act 2005* (Vic.)
- *Child Wellbeing and Safety (Information Sharing) Regulations 2018*
- Family Violence Multi-Agency Risk Assessment and Management Framework
- *Family Violence Protection Act 2008* (Vic.)
- *Family Violence Protection (Information Sharing) Regulations 2018*
- Information Sharing and Family Violence Reforms Contextualised Guidance
- Information Sharing and Family Violence Reforms Toolkit
- Information Sharing Guides, Templates and Tools
- Victorian Institute of Teaching (VIT) Code of Conduct and Ethics

8.0 REVIEW

Implementation Date: August 2020

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