

Duty of Care Policy

PURPOSE

Duty of care is a legal concept that has its origins in the common law principle of negligence. Firbank Grammar School owes a duty to take reasonable care that any students (an/or 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 to the premises.

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

This policy outlines:

- what "duty of care" owed to students means
- the impact of civil liability laws
- how teaching staff may discharge their duty of care to students
- the circumstances in which non-teaching staff, external providers and volunteers may owe students a duty of care.

The Boarding House and School owes a duty to take reasonable care that any student (and/or other 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 to the premises.

In discharging duty of care responsibilities, the School and teaching staff must exercise professional judgment to achieve a balance between ensuring that students do not face an unreasonable risk of harm and encouraging students' independence and maximising learning opportunities.

Against each identified hazard, it is the School's policy to develop risk controls and/or treatment plans. Risk controls often take the form of documented policies that are made available to all school staff through Complispace and Firefly. All policies relating to student safety are set out under the Student section of our policy directory.

It is imperative that all staff consistently enforce school rules and safety policies, and actively engage in ensuring the physical and emotional wellbeing of students.

Note: all reference to the 'School' in this policy includes the School Boarding Premises

SCOPE:

This policy applies to all staff working with children.

Students included within this policy range from ELC – Year 12 and includes international and boarding students. Any reference to the 'School' includes the Boarding Premises.

In accordance with the Guidelines, the School's duty extends to taking reasonable measures, with regard to all the circumstances, to protect students from risks of harm and injury that should have been reasonably

foreseen, with appropriate consideration of the context (the risk/hazard, and the ability level / age / of the students in question).

Duty of care exists within normal school hours, and extends outside these hours for extracurricular activities or other school events, etc.

Individual Circumstances:

Individual circumstances will determine what constitutes reasonable care. The following issues may be considered in assessing the reasonableness of the level of care in any particular circumstance:

- the student's age, experience and capabilities: younger students require more care than mature students
- physical and intellectual impairment: students with disabilities are exposed to higher levels of risk of injury than students without a disability
- medical condition: special care must be taken to protect students with known, or ought to be known, medical conditions which expose them to a higher risk of injury (e.g. asthma or epilepsy)
- behavioural characteristics: the level of care is increased where students are known to behave in a manner that increases the risk of injury
- the nature of hazards present: increased care is required if the School activity has an inherently high level of risk of injury or the activity takes place in a hazardous environment
- any conflicting responsibilities the School or teacher may have
- normal practices and procedures within the School.
- These factors should be taken into account when planning student activities.

RELEVANT LEGISLATION

- The Victorian Registration Standards (sch 4 cl 12).
- Under the Guidelines the School is required to provide evidence in the form of the School's policies and procedures with respect to the duty of care owed to students.
- The Commonwealth and all Australian States and Territories have enacted civil liability laws that apply in relation to claims for damages resulting from negligence.
- These laws limit liability in certain circumstances including, in broad terms: The existence of civil liability laws means that issues of liability for student care claims in Australia will ultimately be determined by a complex mixture of legislation and common law (judge's decisions).
- Wrongs Act 1958(Vic)

DEFINITIONS

Duty of Care: 'Duty of care' is an element of the tort of negligence. In broad terms, the legal position is that if a person is injured because 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; and
- this breach or failure caused or contributed to the injury, loss or damage suffered

Duty of care obligations are not absolute, but require protection not only from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be taken.

International Students: International students are students that are enrolled at FGS that are permitted to study on a student Visa. Firbank acknowledges that special consideration and care is required for all our International Students, to take into consideration particular risks and vulnerabilities of overseas students.

Teaching Staff: The standard of care required is that of a 'reasonable' teacher. This means that the duty of care owed is the duty one would expect from a hypothetical teacher with normal skills and attributes exercising their professional judgement. The duty owed to students is not an absolute duty to ensure that no harm will ever occur, but a duty to take reasonable care to avoid harm being suffered.

Non-Teaching Staff: Non-teaching staff, volunteers (including parents/carers and volunteers) and external providers also owe a modified duty of care to protect students from risks of harm that reasonably ought to be foreseen. This duty is only undertaken when the duty is consciously passed from a teacher to a non-teaching staff member, volunteer or provider, and accepted by that individual. For example, a teacher may ask a non-teaching staff member to accompany a student to a different area of the School. While normally, this staff member may not owe a standard duty of care to that student, as they have accepted the duty to care for and supervise the student passed from the teacher, they now must protect that student from foreseeable risks of harm.

Delegation of authority: 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.

ROLES AND RESPONSIBILITIES

School:

To assist the School to discharge its safety responsibilities, Firbank Grammar has developed:

1. an Occupational Health & Safety Program through which we identify potential safety hazards and analyse them in terms of the likelihood of an event occurring, and the potential consequences if the event was to occur.
2. Use of Consent2Go to identify, assess and mitigate risks associated with incursions, excursions, overnight camps and tours, for the purpose of assessing student safety risks.
3. Development of risk registers across various areas of the school to assist in risk management for:
 - a. School wide – SLT and Board
 - b. International Students
 - c. Boarding house
4. The school is required to communicate the policies and procedures that ensure we are upholding our duty of care responsibilities, and provide training to staff where appropriate.

The Principal:

- Ensuring effective risk and hazard identification and management programs exist
- Ensuring training is provided to staff and students of safety policies and procedures
- Ensuring effective hazard management, isolation and reporting procedures exist.
- Ensuring systems exist to support student medical management.

Heads of Campus:

- Ensure staff are always complying with their duty of care obligations.
- Ensure that appropriate supervision requirements and staff ratios are met, relevant to the context, to ensure individual staff members can safely comply with their duty of care requirements.

Teaching staff:

- Teachers must understand their duty of care obligations.
- Staff must ensure they make reasonable efforts to identify and mitigate all risks affecting students, and apply mitigation strategies as appropriate (likelihood, consequence, context).
- Must not delegate their duty of care to a third party (non-staff member) at any time.
- May appropriately delegate their duty of care to another member of staff, with appropriate communication in place.
- Must provide evidence of duty of care obligations through:
 - Population of incursions / excursions in Consent2Go
 - Actively participate in risk identification and mitigation activities
 - Must report any incidents through the school incident reporting system in complispace
 - Must comply with all school H&S related policies.

Non-Teaching Staff:

- May assume duty of care responsibilities for a student if directed to do so by a member of teaching staff.
- Must know and understand their duty of care obligations.

Boarding House staff:

- Boarding house staff must comply with all policies and procedures as apply to the School and the Boarding House.

Students and Families:

- Students and parents/ guardians must provide all relevant personal and medical information pertaining to their child, in order to ensure the school is capable of providing appropriate levels of care as required by that student.
- Parents must advise the school as soon as reasonably possible of any situation which may impact on the health and safety of either their child, or of the other children at the school.

RELATED POLICIES AND PROCEDURES

1. Child Safe & Wellbeing Policy
2. Staff and Student Professional boundaries policy
3. Anaphylaxis and Allergy Management Policy
4. Asthma Policy
5. Concussion and Head injury policy
6. Diabetes Management
7. Diverse Learning Needs and Inclusive Access Policy
8. Epilepsy & seizures policy
9. First Aid Policy
10. Head Lice Policy
11. Heat Stress Policy
12. Infectious diseases Policy
13. Immunization Policy

14. Medication Management Policy
15. Mental Health Management and support policy
16. Sun Protection
17. General Supervision Policy
18. Information Communications and Technology Policy
19. Bullying response Process - Relationship restoration framework
20. Behaviour Management Policy
21. Incident management Policy

Approval and Review	Details
Policy issue date August 2023	Document updated by M Hall – Risk and Compliance Manager
Next review date August 2024	Document reviewed by Jenny Williams – Principal, Head of Senior Campus
	Document endorsed by SLT
	Date endorsed September 2023

The school community may provide feedback on this document by emailing the required campus Reception:

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