



The Scots College

Sydney Australia

Student Duty of Care (Summary)

Background

Duty of care is a legal concept that has its origins in the common law principle of negligence. Student duty of care not only underpins but to a large extent drives, many of The Scots College's policies and practices.

This policy attempts to explain, in plain English:

- 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.

Duty of Care Owed to Students

The Scots College and its teachers owe a duty to take care of students whilst they are involved in College activities or are present for the purposes of a College activity. This duty of care is non-delegable.

The duty is to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen. This requires not only protection from known hazards but also protection from harm that could foreseeably arise and against which preventative measures can be taken.

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.

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 College activity has an inherently high level of risk of injury or the activity takes place in a hazardous environment.





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- Any conflicting responsibilities the College or teacher may have.
- Normal practices and procedures within the College.
- These factors should be considered when planning student activities.

Civil Liability Laws

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 College does not owe a duty of care to warn of an 'obvious risk'.
- The College will not be liable for harm suffered as a result of the materialisation of an 'inherent risk'.

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).

Discharging Duty of Care Responsibilities – Our Risk-Based Approach

In discharging the duty of care responsibilities, the College 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.

To assist the College to discharge its safety responsibilities, The Scots College has developed a Work Health and 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. A similar risk-based approach is taken with respect to Student Duty of Care, with the definitions of likelihood and consequences together with the Risk Matrix used in our Work Health and Safety Program, for the purpose of assessing student safety risks.

Against each identified student safety hazard it is the College'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 College staff through the College intranet.

All policies relating to student safety are set out under the Student Duty of Care menu on our CompliSpace homepage.

It is important that all teachers consistently enforce College rules and safety policies, and actively engage in ensuring the physical and emotional wellbeing of students.





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Non-Teaching Staff, Volunteers and External Providers

When non-teaching staff, volunteers and external providers agree to perform tasks that require them personally to care for students (in the absence of a member of the teaching staff), they will also owe a duty to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

