

DUTY OF CARE INFORMATION SHEET FOR SCHOOLS¹

Disclaimer: This information sheet is not intended to be used as legal advice or as policy; rather, it is a sheet to be used to inform those who are unsure of what a duty of care is and to whom a duty of care is owed.

School staff includes all staff working on school grounds who are employed, contracted, or performing any work for the Department of Education.

Everyone owes a duty of care to those around them. A higher level of duty exists for all school staff, towards every student under his or her supervision by virtue of the conditions of their employment and the common law principles of negligence. All persons on school grounds should be aware of the context in which they are operating, as it has an effect on the level of duty of care owed.

Generally speaking, school staff owe students a duty to take reasonable care to protect him or her from a reasonably foreseeable risk of injury. This duty may be manifested in different ways, including:

- the duty to supervise the students so that they comply with rules and practices designed for their own safety and that of other students
- the duty to design and implement appropriate programs and procedures to ensure the safety of students
- the duty to warn students about dangerous situations or practices.

This list is not exhaustive. Basically, the duty is to do what is reasonable in response to the duty in a given situation. The question of what is reasonable in a given instance is decided by the court in the event of litigation, but it is for the individual teacher, the principal and the department to comply with objectively reasonable practice.

Teachers cannot delegate the duty of care they owe to students. Other school staff may be left in charge if a teacher needs to leave the classroom for a period of time but responsibility for the students' health, safety and welfare rests with the supervising or controlling teacher.

Common law negligence

In order for a liability in negligence to be established, it must be proved that:

- a duty of care was owed in the circumstances
- the duty was breached, because of an act or omission on the part of the person owing the duty
- a loss or injury is suffered as result of the breach
- the type of loss or injury suffered was a reasonably foreseeable consequence of the act or omission

¹ Extracted with amendment from the current Government of South Australia Duty of Care document (2007).

The Northern Territory *Personal Injuries (Liabilities and Damages) Act* states that a loss or injury per se is not enough to ground liability in negligence, it must be a loss or injury of a type and scale as compensable under the Act.

The standard of care owed to a student will vary according to the circumstance. If the standard of care required in a particular situation is not met and a student suffers loss or injury, a liability in the common law tort of 'negligence' will arise. If such liability is established, a parent or student may make a claim for 'damages', which is financial compensation for all foreseeable loss (both economic and non-economic) arising from the negligence subject to the operation of the *Personal Injuries (Liabilities and Damages) Act*.

The Northern Territory of Australia is vicariously liable for the torts of its employees (except where such torts arise from serious and wilful, or gross, misconduct in the course of employment), which means that any common law claims will be issued against the Northern Territory of Australia as employer generally rather than against an individual teacher or school. With this said, the department may take disciplinary action against an employee in relation to a breach of duty of care.

All school staff should take a risk management approach to all activities; those who act carefully and sensibly, and plan and supervise activities properly, should not fear being sued for injuries suffered by students.

The Department of Education Risk Management Framework Guideline is accessible through the hyperlink below.

Resources for teachers

[TRB Protective Practices](#)

[Risk Management Framework Guideline](#)