

DUTY OF CARE POLICY

1. Statement of Context and Purpose

The Knox School (the **School**) is committed to ensuring the care, safety and welfare of its students. The School has established strategies, practices, policies and procedures to uphold this commitment, and to ensure that it discharges the duty of care it owes to its students.

The School treats seriously all of its legal obligations to create a safe space for its students at all times, and seeks to ensure that its culture is defined by a mentality where protecting students forms part of our everyday thinking and activity.

This policy sets out the key elements to the School's approach in discharging its duty of care to students. This includes:

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

2. Scope

This policy applies to all Board members, employees, volunteers, contractors and other authorised personnel required to perform functions on the School's premises. This policy will refer to all employees, volunteers, contractors and other authorised personnel interchangeably as 'staff'.

This policy extends to any person who is engaged in student-related work that has direct and regular contact with students.

This policy is not intended to override or form part of the terms of any award or contract that applies to an employee but should be considered a reasonable direction to staff. As such, staff are expected to abide by this policy and report any suspected or known breaches of this policy.

3. Duty of care

The School has a legal duty of care to students while they are involved in School activities, or present for the purposes of being involved in School activities.

This 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.
- Reasonable care that any student (and other person) on the School's premises will not be injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the premises.

This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be reasonably taken.

4. Duty of care – Teaching staff

Teachers owe a special duty of care toward students.

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 judgment. 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 foreseeable harm being suffered.

5. Standard of care – Non-teaching staff, volunteers & external providers

Non-teaching staff, volunteers (including parent 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 arises when the duty is consciously passed from a teacher to a non-teaching staff member, volunteer or external 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.

In any case, all staff are required to act in a manner which upholds the School's duty of care.

6. Students' 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 (eg. 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.
- Cultural characteristics: the cultural characteristics of students may affect a student's exposure to risk.
- 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; and normal practices and procedures within the School.

These factors must be taken into account when planning student activities.

7. Restrictive intervention and seclusion

The School believes that restrictive intervention and seclusion of a student are to be used as a method of last resort. However, at times staff may find it necessary to respond to a student behavioural concern in such a manner where:

- There is an imminent threat of physical harm or danger to a student and others.
- Physical restraint and/or seclusion are reasonable in the circumstances.
- There is no less restrictive measure reasonably available in the circumstances.

Restrictive intervention and seclusion of a student must not occur unless the above criteria are met.

In the rare event that a student is restrained, staff must:

- Use the minimum force required to address the imminent threat of physical harm or danger.
- Only restrain the student for the minimum duration required.
- Monitor the student for any indicators of distress and immediately cease the restraint should these be identified.
- Communicate with the student to make clear why the restraint is being applied.
- Ensure that the restraint used is consistent with the student's individual needs and circumstances, including but not limited to the student's age, gender, size, and any additional needs such as behavioural, intellectual, neurological, sensory, medical or

communication impairments.

The decision about whether to use restrictive intervention and seclusion rests with the professional judgement of the staff involved, following consideration of their legal and professional obligations.

Staff must immediately document and report all instances of physical restraint or seclusion to a member of the Executive Leadership Team.

For further information regarding restrictive intervention and seclusion please refer to the Child Restraint Policy.

8. 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 School does not owe a duty of care to warn of an “obvious risk”.
- The School 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).

9. Discharging duty of care responsibilities

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

Non-teaching staff, volunteers and external providers must exercise judgment appropriate in the circumstances.

To assist the School to discharge its safety responsibilities, the School has developed an Occupational Health & Safety Policy and Student Safety Risk Register through which the School identifies potential safety hazards and analyses these in terms of the likelihood of an event occurring, and the potential consequences if the event was to occur.

10. Breach

The School emphasises the need to comply with the requirements of this policy. Any staff found to be in breach of the requirements of this policy may be subject to disciplinary action, up to and including termination of employment (or engagement, where appropriate). Breaches may also result in appropriate authorities and/or the Police being informed.

11. Communication

This policy is available to parents, students and the School community via the School's website.

This policy is available to staff as part of the School's internal policies and procedures, and forms part of the School's induction program for incoming staff. Aspects of (and updates to) the School's student protection policies will be addressed in the School's professional development updates, training programs, bulletins and newsletters.

12. Related documents

- Student Safety at The Knox School Handbook
 - Student Safety Risk Register
 - Occupational Health and Safety Policy
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Constructed / Reviewed by: Russell Kennedy Lawyers	Approval Required: Executive Leadership team	
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