



## **MATER DEI STUDENT DUTY OF CARE POLICY**

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 Mater Dei's policies and practices.

This policy attempts to explain:

- 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; and
- The circumstances in which non-teaching staff, external providers and volunteers may owe students a duty of care.

### **Duty of Care owed to Students**

Mater Dei School and its teachers owe a duty to take care of students whilst they are involved in school activities, or are present for the purposes of a school 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 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 should be taken into account 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 school does not owe a duty of care to warn of an “obvious risk”; and
- 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).

### **Discharging Duty of Care Responsibilities- Our Risk Based Approach**

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.

To assist the school to discharge its safety responsibilities, Mater Dei School has developed a Workplace 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 Workplace Safety Program, for the purpose of assessing student safety risks.

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

### **Non-Teaching Staff, Volunteers & 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.

Approved at Leadership Team YES / NO / NA	Signed	Date
Approved at Board YES / NO / NA	Signed	Date
Staff Briefed YES / NO	Signed	Date
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