



Duty of Care

This policy aims to make sure department staff, including staff at Trott Park Kindergarten understand:

- they have a duty of care to children and young people in their care
- the reasonable steps they must take to meet their duty of care
- the standard of care required of them
- they must not breach their duty of care
- what happens if they breach their duty of care.

This document does not detail education staff legislative obligations with respect to ensuring children are safe from harm as outlined within the *Children and Young People (Safety) Act 2017*, however, education staff should be aware that those obligations are in addition to their general common law duty to care for all children in our care and control.

Scope

This policy applies to all department staff, irrespective of job and person specification and/or role classification (ie teachers, principals, wellbeing leaders, SSOs, AEWs, etc) when children and young people are in their care.

It also applies to all individuals and entities ("other parties" engaged or contracted by the department to perform work and/or to provide support services, which involve interactions with children and young people or require close proximity to or access to children and young people (ie volunteers, contractors, employees from external agencies, third party service providers, etc).

This document does not detail the mandatory obligations of department staff with respect to keeping children and young people safe from harm as outlined in the *Children and Young People (Safety) Act 2017 (SA)*. Mandatory reporting obligations exist in addition to duty of care.

What is duty of care?

The department has a legal obligation to take reasonable steps to keep children and young people safe from risk of harm when they are in the department's care.

Who has a duty of care?

All department staff have a duty of care to make sure children and young people are safe and protected from reasonably foreseeable harm or injury when in the department's care.

Other parties also have a duty of care depending on the circumstances.

Duty of care cannot be delegated to another person. This means the department is legally responsible for keeping children and young people safe from harm or injury even if department staff or other parties ask others to help care for children and young people.

What is standard of care?

Standard of care is the level of care expected of department staff and other parties to keep a child or young person in their care safe. Standard of care is determined by looking at what a reasonable person would have done (or not done) in the same circumstances.

The standard of care that is necessary will differ according to roles and qualifications. Not everyone will have the same standard of care. For example, while a teacher and ECW both have a duty of care to children and young people, the teacher is held to a higher standard of care than an ECW.

Meeting duty of care

The reasonable steps that department staff and other parties must take to meet their duty of care depend on:

- the individual circumstances of the situation (eg the type of activity taking place); and
- the level of responsibility that they hold in their position based on their job and person specification, qualifications, contractual obligations and terms of engagement (eg volunteer agreement).

What are reasonable steps?

Department staff and other parties must take reasonable steps to prevent or reduce the risk of reasonably foreseeable harm or injury to children and young people.

For example, they must:

- plan for and provide a suitable and safe environment appropriate for each activity. This includes activities held in school facilities (eg classrooms, sports gym, library, science laboratories), outdoor spaces, excursion and camp sites, and activities that require transportation to/from an offsite venue/location
- provide adequate supervision with consideration of the number of supervisors necessary for the activity and the capabilities, skills and/or qualifications of the supervisors
- provide access to medical assistance in the form of appropriately trained/qualified supervisors, appropriate first aid supplies, phone coverage to contact emergency contacts, etc
- comply with relevant department policies and procedures.

When department staff and other parties are considering what reasonable steps to take to prevent reasonably foreseeable risk of harm or injury, they must turn their minds to numerous factors, including:

- the number of children or young people involved in the activity
- the age and ability level of the children or young people
- the nature of the activity
- the environment in which the activity will take place
- the burden of taking certain precautions (eg practical and financial burdens) and risk assessment outcomes (eg low risk vs high risk activities).

See 'preventing and reducing risk of harm or injury' in the duty of care for children and young people guideline for further information on reasonable steps.

How is a breach of duty established?

If loss or harm results from the department's failure to exercise duty of care to a child or young person, that breach may result in a negligence claim against the department. A negligence claim may be decided by a court.

For a court to determine whether negligence has been established, it must be proven that:

- a duty of care existed in the circumstances
- the duty was breached because of an act or omission by the person owing the duty
- a reasonable person in the same circumstances would not have acted in the same way
- loss or harm was suffered as a result of that breach
- the loss or harm was a reasonably foreseeable consequence of the act or failure to act.

Claims for damages resulting from a breach of duty

If it is proven that a child or young person suffered loss or harm due to the act or failure to act of a department staff member or other party, a parent of the child or young person may make a claim for damages, which is financial compensation. These claims are referred to, and managed by, Legal Claims. There must be evidence of loss or harm suffered by the child or young person. This will usually take the form of economic loss (for example, a loss of future income, loss of opportunity, or the cost of medical expenses), or it may be non-economic loss (for example, pain and suffering and loss of enjoyment of life).

A court is able to award damages to a person where liability is found and loss or harm is proven.

Indemnification of departmental employees by the Crown

If a child or young person in the department's care is harmed or injured, and a civil claim is made, the *Public Sector Act 2009* (SA) provides for department staff to be indemnified against the claim if their activities were lawful, occurred when performing their duties, and the department staff were acting in good faith. In these circumstances the Minister will be legally responsible for any claims for damages rather than an individual employee.

Related legislation

[Children and Young People \(Safety\) Act 2017](#)

[Child Safety \(Prohibited Persons\) Act 2016](#)

[Civil Liability Act 1936](#)

[Disability Discrimination Act 1992 \(Cth\)](#)

[Equal Opportunity Act 1984](#)

[Education and Children's Services Act 2019](#)

[Education and Early Childhood Services \(Registration and Standards\) Act 2011](#)

[Public Sector Act 2009](#)

[Work Health and Safety Act 2012](#)

Related policies

[Camps and excursions policy](#)

[Camps and excursions procedure](#)

[Safeguarding children and young people policy](#)

[Duty of care to children and young people guideline \(PDF 267.9KB\)](#)

[Information Sharing Guidelines](#)

[Non-education service providers in preschools, schools and educational programs procedure](#)

[Safety management procedure](#)

[Sporting and adventure activities standard](#)

[Risk management policy and framework](#)

[Screening and suitability- child safety policy \(PDF 280.0KB\)](#)

[Vocational education and training policy](#)

[Volunteer policy](#)

[Work health and safety policy](#)

This Policy has been developed in conjunction with the Trott Park Governing Council

Signed  (Governing Council Chairperson)

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