



## Duty of Care

### Rationale:

To explain the nature of the legal duties owed by teachers and school staff towards students. This policy is underpinned by legislation as outlined in the DET Policy and Advisory Guide and should be read in conjunction with such. In addition to their professional obligations, Principals and teachers have a legal duty to take reasonable steps to protect students in their charge from risks of injury that are reasonably foreseeable. This policy should be read in conjunction with *Ministerial Order 870- Child Safe Standards*, the College's *Statement of Commitment to Child Safety, Mandatory Reporting and Camps and Excursions policies*.

### Aim:

To ensure that staff have an awareness and understanding of their duty of care obligations and responsibilities in order to provide adequate supervision at all times.

To ensure that staff consistently conduct themselves, at all times, with these legal obligations and responsibilities.

### Definition:

Whenever a student–teacher relationship exists, the teacher has a special duty of care. This is defined as: “A teacher is to take such measures as are reasonable in the circumstances to protect a student under the teacher’s charge from risks of injury that the teacher should reasonably have foreseen.” (*Richards v State of Victoria (1969)* VR 136 at p. 141) As part of that duty, teachers are required to supervise students adequately. This requires not only protection from known hazards, but also protection from those that could arise (that is, those that the teacher should reasonably have foreseen) and against which preventive measures could be taken.

**School authorities in breach of the duty of care may be liable for injuries inflicted by one student on another, as well as for injuries sustained by a student.**

Schools normally satisfy the duty of care by allocating responsibilities to different staff. For example, the Principal is responsible for making and administering such arrangements for supervision as are necessary according to the circumstances in each school, and teachers are responsible for carrying out their assigned supervisory duties in such a way that students are, as far as can be reasonably expected, protected from injury.

This duty extends to intervention in single-sex areas if need be by a teacher of the other gender.

The duty may, in some circumstances, extend outside school hours and outside the school premises. This will depend on whether the relationship between staff and student extends to the individual circumstances, whether the risk was known or foreseeable, and whether there were any reasonable steps that could be taken to prevent the injury from occurring.

### Standard of care required by schools

Principals and teachers are held to a high standard of care in relation to students. The duty requires principals and teachers to take all reasonable steps to reduce risk, including:

- Provision of suitable and safe premises
- Provision of an adequate system of supervision
- Implementation of strategies to prevent bullying
- Ensuring that medical assistance is provided to a sick or injured student.

## Implementation:

- The Principal is responsible for ensuring that there is an adequate system of supervision in place during school hours, before and after school, and on school excursions and camps.
- Teachers and other school staff are responsible for following reasonable and lawful instructions from the Principal, including instructions to provide supervision to students at specific dates, times and places.
- Although the general duty is to take reasonable steps to protect students from reasonably foreseeable risks of injury, specific (but not exhaustive) requirements of the duty involve providing adequate supervision in the school or on school activities as well as providing safe and suitable buildings, grounds and equipment.
- A teacher's duty of care is not confined to the geographic area of the school, or to school activities, or to activities occurring outside the school where a student is acting on a teacher's instructions. The duty also applies to situations both before and after school where a teacher can be deemed to have 'assumed' the teacher pupil relationship.
- Duty of Care requirements include providing adequate supervision in the school or on school activities; providing safe, well maintained and suitable premises, grounds and equipment to minimize the risk of injury or damage to a person; providing effective anti-bully strategies; and ensuring appropriate and timely medical assistance is provided to injured or sick students.
- All staff need to be aware that greater measures may need to be taken for younger students or students with disabilities.
- The teacher's duty of care is greater than that of the ordinary citizen in that a teacher is obliged to protect a student from reasonably foreseeable harm or to assist an injured student, while the ordinary citizen does not have a legal obligation to respond.

Whilst each case regarding a teacher's legal duty of care will be judged on the circumstances that occurred at the time, the following common examples may be times when a teacher has failed to meet their legal duty of care responsibilities to their students:

- Arriving late to scheduled timetabled yard duty responsibilities
  - Arriving late to a scheduled timetabled class
  - Arriving late to an 'extra' or 'in lieu' class or yard duty
  - Failing to attend a class, extra, in lieu or yard duty
  - Failing to act appropriately to protect a student who claims to be bullied
  - Believing that a child is being abused but failing to report the matter appropriately
  - Leaving students unattended in the classroom
  - Ignoring dangerous play
  - Leaving the school ground during time release without approval
  - Inadequate supervision on a school excursion
- Staff members are also cautioned against giving advice on matters that they are not professionally competent to give (negligent advice). Advice is to be limited to areas within a teacher's own professional competence and given in situations arising from a role (such as careers teacher, year level coordinator or subject teacher) specified for them by the principal.
  - Teachers must ensure that the advice they give is correct and, where appropriate, in line with the most recent available statements from institutions or employers. Teachers should not give advice in areas outside those related to their role where they may lack expertise.

## Risks to students outside the school environment

Legal cases establish that a teacher's duty of care does not start nor end at precise times during the day. The approach generally taken is that a teacher's duty applies irrespective whether the risk occurs in or outside the school environment. However, the important issue in all cases will be whether the school took **reasonable steps** to protect the student from the risk.

Risks outside the school environment may sometimes call for immediate and positive steps by a school depending on the age of students, urgency and threat of injury. Consider for example, if a live power line came down outside the school, no emergency workers had arrived, and primary children are about to be dismissed to walk home. No school would allow the children to walk out to that danger unsupervised.

There will be a number of other situations where the school will be under a duty to take reasonable steps. In some instances, the school's control over the activity may require it to take more active measures to satisfy the requirement that it take reasonable steps. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. In other instances, the school may not control the activity, and the reasonable measures available to it will be limited. For example, fights at a local train or bus stop between students from rival schools may involve informing the police, contacting the other school to implement preventative measures, and notices to parents and students.

### **Classroom Supervision**

- It is **not** appropriate to leave students in the sole care of ES (when the ES is not in the line of site of a teacher), parents or trainee teachers (At law, the Duty of care cannot be delegated).
- It is **not** appropriate to leave students in the care of external education providers; for example- incursions (At law, the Duty of care cannot be delegated). Where the school has contracted an external provider (E.g. registered training organization) to provide VET/VCAL units for example, then a DET approved contractual agreement needs to be signed by the school and other provider.
- In an emergency situation use the phone for the Principal or Assistant Principal or contact the teacher in the next room. (if appropriate – send another student for assistance)
- No student should be left unsupervised *outside the classroom beyond the parameters of the Behaviour Management Plan (3-5 minutes within site of the teacher)* as a withdrawal consequence for misbehaviour. Longer withdrawal is to be conducted by sending a student to a colleague's classroom, or to the Assistant Principal or Principal. This should be accompanied by documentation and appropriate follow up. The teacher, Principal or Assistant Principal is to be contacted first to alert them that the student is on their way.

### **Movement of Students**

- Care needs to be taken in allowing students to leave the room to work in other areas of the school.
- Use of students as monitors outside the room during class time must only occur with the approval of the Principal or Assistant Principal
- Discretion is to be used when allowing students to visit the toilet during class time.

### **Yard supervision**

- Yard supervision is an essential element in teachers' duty of care. It is now clearly established that in supervising pupils, teacher's duty of care is one of positive action.
- Be aware that students are usually less constrained and more prone to accident and injury than in a more closely supervised classroom, especially towards the end of a break time.
- Be aware that yard duty supervision within the school requires the teacher to fully comply with DET guidelines and brings with it an increased duty of care. It is a teacher's responsibility to be aware of these guidelines and duty of care responsibilities.
- Teachers timetabled for duty are to attend the designated area at the time indicated on the timetable.
- Teachers on duty are to remain in the designated area until the end of the break period or until replaced by the relieving teacher, whichever is applicable.
- The handing over of duty from one teacher to another must be quite definite and **must occur in the area of designated duty**. Where a relieving teacher does not arrive for duty, the teacher currently on duty should send a message to the office, **but not leave the area until replaced**.
- No changes to the yard duty timetable are to be made without the approval of the Daily organiser, or Assistant Principal.

- Be alert and vigilant -intervene **immediately** if potentially dangerous behaviour is observed in the yard - enforce Kambrya College behaviour standards and logical consequences for breaches of safety rules as required.
- Teachers should always be on the move, focused on the students at play and be wearing the high visibility vest.
- If a parent, guardian and carer (or other authorised person) drops off or otherwise arranges for a student to be on the school premises **before** supervision commences at the beginning of the day, the principal will, as soon as practicable, follow up with the parent, guardian and carer to:
  - Advise of the supervision arrangements before school, and
  - Request that the parent, guardian or carer make alternate arrangements.
- If a parent, guardian or carer (or other authorised person) has **failed to collect the student after school**, the next steps may include some or all of the following:
  - Attempting to contact the parents, guardians or carers.
  - Attempting to contact the emergency contacts.
  - Placing the student in the out of school hours care program (if appropriate).
  - Contacting the Victoria Police and/or the Department of Human Services (Child Protection) to arrange for the supervision, care and protection of the student.

### **Late arrival or early departures**

The Principal will ensure that the school has a procedure in place for the safe collection and drop off of students at school during school hours (e.g. late arrival or an early departure). This will include a record of the date and time, the reason for the late arrival or early departure, and the person who has authorised the late arrival or early departure.

In relation to early departure from school, the procedure will also include:

- Students will be only permitted to leave the school premises under the supervision of a parent or another person authorised by parents to collect the student.
- If the person collecting the student is unknown to school staff, school staff will request photo identification to verify the person's identity.

### **Excursions, Incursions and Camps**

- Be aware that students are usually less constrained and more prone to accident and injury than in a more closely supervised classroom.
- Be aware that an incursion with an external provider does not absolve supervision duties of the teacher, including first aid duties. A teacher must be present at all times and remain the person designated with duty of care responsibilities.
- Be aware that camps and excursions outside the school require the teacher to fully comply with DET guidelines and bring with it an increased duty of care. It is a teacher's responsibility to be aware of these guidelines and remain the person designated with duty of care.
- Be aware that excursion and camp activities require the teacher to ensure that the venue and transport adhere to DET guidelines.
- Be aware that school policy is for students to be counted on and off transport and at other times on a regular basis whilst on excursion or camp activities.
- The teacher in charge will have copies of all confidential medical forms and permission notes with contact details. A copy of this material will also be kept at school.
- Arrangements will be made for students not attending to continue their normal program at school under supervision of another classroom teacher.
- The teacher in charge or designated teacher of an excursion or camp will carry a mobile phone and a first aid kit.

- If the return time from an excursion or camp is delayed, the teacher in charge will contact the school to inform the Principal of the new arrival time so that parents can be contacted, and a senior staff member will remain at school until they arrive.
- If crossing roads students are to use designated crossing points. Staff are to walk to the middle of the crossing to ensure visibility and orderly crossing. Other staff control the flow of students across the road.
- All staff must follow the DET guidelines when organising an excursion, incursion or camp. All procedural steps contained in the College camping, excursions and incursions Policies must also be followed.
- Legal cases establish that a teacher's duty of care does not start nor end at precise times during the day. The approach generally taken is that a teacher's duty applies irrespective whether the risk occurs in or outside the school environment. However, the important issue in all cases will be whether the school took reasonable steps to protect the student from the risk.
- Risks outside the school environment may sometimes call for immediate and positive steps by a school depending on the age of students, urgency and threat of injury.
- Supervision can be provided by others including volunteer parents, campsite staff, specialist instructors and pre-service teachers. Most excursions and camps must:
  - Be under the direct control of a teacher with at least one other excursion staff member present
  - Have enough teachers to maintain appropriate control of the excursion and each activity
  - Have teachers comprising at least half of the excursion staff

Any person (other than a teacher) who supervises students on an excursion or camp must have a current Working with Children check.

- Prior to the commencement of the excursion or camp, the Principal must ensure that the specific roles and responsibilities of each supervisor are clarified and understood by all supervisors and students.

### **Roles and Responsibilities**

- Regularly communicate the duty of care and supervision obligations and responsibilities to all staff.
- Regularly communicate the supervision arrangements to parents.
- Determine the level of student supervision to be provided to students in all of the circumstances.
- Allocate specific responsibilities to staff members to provide the supervision that is required.
- Communicate the specific supervision responsibilities allocated to staff members.
- Regularly review the level of student supervision provided to students and make adjustments as and when deemed appropriate.
- Regularly review the duty of care and supervision policy to ensure that it is consistent with the School Policy and Advisory Guide and continues to meet the duty of care obligations and responsibilities for all students.

### **Informing Staff of the legislative liability of Duty of Care**

All staff at Kambrya College will be informed of their legal requirement via:

- A copy of this document will be provided to each member of the Kambrya College staff at the first staff meeting at the commencement of the school year and will be placed on the intranet.
- New staff will be informed of their Duty of Care as part of the College's Induction Program.
- Duty of Care will be an agenda item at staff meetings and staff will be directed to familiarise themselves with Student Safety section of the Victorian Government Schools Policy Advisory Guide.
- Staff will complete a risk assessment including duty of care when completing planning for camps, excursions and incursions.

## **Visitors to the College**

The Principal will ensure that there is a procedure to monitor all visitors in the school. As a minimum, this procedure must require all visitors arriving and departing the school premises during school hours to use a visitors' book to record their name, their signature, the date and time, and the purpose of the visit.

## **Use of Information and Technology Technologies**

Teachers and other staff also have a responsibility to reasonably supervise the use of information and communication technologies, and the use of online learning environments at school.

In doing so, teachers and other staff should be guided by the following:

- Relevant Departmental policies (e.g. Student Engagement Guidance, Acceptable Use Policy)
- Relevant [school name] policies (e.g. Acceptable Use Agreements)

## **Child Safety Standards- duty of care principles**

- The School will demonstrate a strong commitment to the care, safety and wellbeing of all students- to promote child safety within the school environment through ongoing development, implementation, monitoring and risk management evaluations in the protection of children against sexual, physical, psychological and emotional abuse and neglect.
- All people engaged or recruited for child-related work, including volunteers, are required to hold a current Working with Children Check and / or VIT teacher registration. Evidence of such must be provided for College records by the individual or external agency (e.g. recruitment agency).
- To provide guidance to staff, volunteers and contractors as to actions that should be taken where they suspect any abuse within or outside of the College.
- All staff, contractors, volunteers, visitors and any other member of the school community involved in child-related work will be required to sign off that they have read and understood the Code of Conduct annually.
- All staff, contractors, volunteers and any other member of the school community involved in child-related work are required to comply with the Code of Conduct by observing expectations for appropriate behaviour (listed below). The Code of Conduct applies in all school situations, including school camps and in the use of digital technology and social media.
- At least annually, all staff and school counsellors must be provided appropriate guidance and training relating to the child safety standards and their obligations and responsibilities for managing and minimising the risk of child abuse.
- Processes are in place to ensure the continuing suitability of people engaged in child related work.
- New teachers will be inducted to school specific and over-arching DET / VQRA compliant policies and the staff manual that is available to all staff.
- Appropriate procedures will be implemented to provide protection and ongoing support for victims of child abuse (Child Support Plan).
- All staff will be expected to promote student empowerment and participation and to support appropriate education programs about expected standards of behaviour, healthy and respectful relationships (including sexuality), resilience and child abuse awareness and prevention.
- Any allegations of abuse and / or safety concerns and any subsequent school response will be promptly reported to appropriate authorities, documented and securely stored.
- The College will provide relevant staff and volunteers with training in identifying child abuse risks, for example blocked-off/out-of-sight spaces (especially rooms with doors that can be locked), overnight stays, and opportunities for physical contact, such as sports coaching and personal care.
- Institute processes for periodic review of risk management approaches and/or processes and following any incidents. Engage methods for continual improvement in how risks are managed by learning from past lessons, including policy review and staff training.

- A risk management approach which is illustrated through the Risk Registry of the College.
- Ensure supervision requirements for staff and volunteers who work with children and adequate to DET and / or the Principal's ratio discretion.
- Recognise and adapt to the needs of particular children and communities, including Aboriginal children, culturally and/or linguistically diverse children and children with a disability. For example, acknowledgement that greater staff or volunteer to child ratios may be needed for some children with a disability.
- Recognise and address risks to Aboriginal children which might exist because of their experiences, for example if a child does not feel safe identifying as Aboriginal, or if there is an inadequate response to self-identification.
- Recognise and address risks to children with a culturally and/or linguistically diverse background, which might exist because of their experiences, for example increased communication with families may be necessary to build trust and understanding of organisational activities.
- Recognise and address risks for children with a disability, for example communication barriers when telling an adult they feel unsafe.
- The College will have a central reporting and advisory contact (Child Safety Officer) for staff to raise concerns and get advice about what to do if they need to report suspected abuse.
- The College will include discussion about apparent risks or 'near misses' in staff meetings and encourage all persons engage on school grounds to provide information for improvement.

*Samples adapted from DHHS booklet- An Overview of the Victorian Child Safe Standards and published by Victorian Govt. 2015*

Kambrya College has confirmed and will continue to review processes to ensure all staff and volunteers have a clear set of principles about how they should behave in their interaction with children to maintain duty-of-care. It also guides staff and volunteers in how to best support children and to manage difficult situations.

All people engaged or recruited for child-related work, including volunteers, are required to hold a current Working with Children Check and / or VIT teacher registration; proof of personal identity and any professional or other qualifications; etc. Evidence of such must be provided for College records by the individual or external agency (e.g. recruitment agency).

The following principles are those recommended and endorsed by VRQA (as acceptable and unacceptable) and will guide all adult behaviour when interacting with or undertaking child-connected work at Kambrya College-

### **Acceptable Behaviours**

All staff, parents, contractors, visitors and volunteers are responsible for supporting the safety of children by:

- Adhering to the school's Child Safe Code of Conduct at all times; taking all reasonable steps to protect children from abuse;
- Treating everyone in the school community with respect;
- Vigilantly supervising students in all school environments;
- Listening and responding to the views and concerns of children, particularly if they are disclosing that they or another child has been abused or that they are worried about their safety / the safety of another child;
- Promoting the cultural safety, participation and empowerment of Aboriginal and Torres Strait Islander children;
- Promoting the cultural safety, participation and empowerment of children with culturally and / or linguistically diverse backgrounds;
- Promoting the safety, participation and empowerment of children with a disability;
- Promoting the safety, participation and empowerment of children living in Out-of-Home Care;

- Ensuring as far as practicable that adults are not alone with a child;
- Reporting any allegations of child abuse to the school's leadership team (Wellbeing Co-ordinator/Child Safety Officer, Principal, Assistant Principals)
- Understanding and complying with all reporting obligations as they relate to mandatory reporting and reporting under the *Crimes Act 1958*;
- Reporting any child safety concerns to the school's leadership (Wellbeing Co-ordinator/Child Safety Officer, Principal, Assistant Principals)
- If an allegation of child abuse is made, ensuring as quickly as possible that the child(ren) are safe; and
- Reporting to the Victorian Institute of Teaching any charges, committals for trial or convictions in relation to a sexual offence by a registered teacher, or certain allegations or concerns about a registered teacher.

### **Unacceptable Behaviours**

Staff, parents, contractors, visitors and volunteers must not:

- Undertake any form of corporal punishment as a method of student discipline / student behavioural management (or for any other rationale). Kambrya College in line with DET requirements and morality explicitly prohibits such;
- Ignore or disregard any suspected or disclosed child abuse;
- Develop any 'special' relationships with children that could be seen as favouritism (for example, the offering of gifts or special treatment for specific children);
- Exhibit behaviours with children which may be construed as unnecessarily physical (for example inappropriate sitting on laps) or initiate unnecessary physical contact with children or do things of a personal nature that a child can do for themselves.
- Put children at risk of abuse;
- Use inappropriate language in the presence of children;
- Express personal views on cultures, race or sexuality in the presence of children;
- Discriminate against any child due to age, gender, race, culture, vulnerability, sexuality, ethnicity, physical appearance, or disability;
- Have any on-line contact with a child other than for school-related necessities. This includes social media, instant messaging, photo sharing technologies and / or provision of personal contact details (phone / personal email address details);

*(Samples adapted from VRQA website and A Guide for Creating a Child Safe Organisation- Commission for Children and Young People)*

### **Reasonable steps**

- All school staff members have a duty to take reasonable steps to protect children under their care and supervision from harm that is reasonably foreseeable. The question of what constitutes "reasonable steps" will depend on the individual circumstances of each case.
- Staff may breach their duty of care towards a student if they fail to act in the way a reasonable or diligent professional would have acted in the same situation. In relation to suspected child abuse, reasonable steps may include:
  - Acting on concerns and suspicions of abuse as soon as practicable;
  - Seeking appropriate advice or consulting with other professionals or agencies when the school staff member is unsure of what steps to take;
  - Reporting the suspected child abuse to appropriate authorities such as Victoria Police and DHHS Child Protection;

- Arranging counselling and/or other appropriate welfare support for the child;
- Providing ongoing support to the child – this may include attending DHHS Child Protection Case Planning meetings, and convening regular Student Support Group meetings;
- Sharing information with other school-based staff who will also be responsible for monitoring and providing ongoing support to the child.

Kambrya College staff need to liaise with the Child Safety Officer in all cases of suspicion or reasonable belief that child abuse has occurred, is occurred or is at risk of occurring.

In response to the Betrayal of Trust Report, the Victorian Government has introduced new criminal offences to protect children from sexual abuse. New legislation states that failure to report, or take action in relation to suspected child sexual abuse can now constitute a criminal offence. This includes:

### **1. Failure to Disclose**

This offence applies to all adults (not just professionals who work with children) who form a reasonable belief that another adult may have committed a sexual offence against a child under 16 years of age and fail to report this information to Victoria Police.

### **2. Failure to Protect**

This offence applies to people in positions of authority (Principal Class) who:

Knows of a substantial risk that a child under the age of 16, under the care, supervision or authority of the organisation will become a victim of a sexual offence committed by an adult associated with the organisation (e.g. employee, contractors, volunteer, visitor); **and**

Negligently fails to remove or reduce the risk of harm.

All Kambrya College staff must act as soon as they witness an incident that breaches student safety or when they form a reasonable belief that a child has been or is at risk of being abused.

#### **Teachers and other staff will:**

- Comply with the lawful and reasonable directions of the Principal.
- Comply with all Department and school policies.
- Perform supervisory duties as required.

#### **Parents, guardians and carers will:**

- Make appropriate arrangements for the transport, care and supervision of students travelling to and from school.
- Make appropriate arrangements for the care and supervision of students outside the times of supervision before and after school

***This policy applies to all school staff, parents, student, volunteers, contractors or visitors to school.***

#### **References:**

- *Teachers, students & the law- A quick reference guide for Australian Teachers- Victoria Law Foundation*
- *VIT Professional Code of Conduct: [http://www.vit.vic.edu.au/SiteCollectionDocuments/PDF/1543\\_Code-of-Conduct-June-2008.pdf](http://www.vit.vic.edu.au/SiteCollectionDocuments/PDF/1543_Code-of-Conduct-June-2008.pdf)*
- *DET Policy and Advisory Guide: Duty of Care: <http://www.education.vic.gov.au/school/principals/spag/safety/pages/dutyofcare.aspx>*

*A Guide for Creating a Child Safe Organisation- Commission for Children and Young People*

**Evaluation:**

This policy will be reviewed as part of the school's three-year review cycle.

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<b>Approved by Kambrya College School Council</b>	May 2018
<b>Responsible for Review</b>	Paul Looker- Assistant Principal
<b>Next Review Date</b>	May 2021