

Duty of Care Policy

1. Purpose

St Leonard's College, its Principal and its staff owe a duty of care to take reasonable steps to prevent foreseeable risks of harm to the students (and/or persons) in their care, while they are involved in College activities, are present for the purposes of a College activity and when they are otherwise in the College environment, which in this policy means all physical, virtual and online School environments during or outside of school hours, including other locations provided for student use and those provided through third-party providers.

In discharging duty of care responsibilities, the College and its teaching staff must exercise professional judgement to achieve a balance between ensuring that students do not face unreasonable risk of harm and encouraging students' independence and maximising learning opportunities.

Against each identified hazard, it is the College's policy to develop risk controls and/or treatment plans. Risk controls often take the form of documented policies that are made available to all College staff. It is imperative that all staff consistently enforce College rules and safety policies, and actively engage in ensuring the physical and emotional wellbeing of students.

This policy explains:

- What the legal principle of "duty of care" means in a College setting; and
- What the College, teachers and other staff need to do to meet their duty of care responsibilities.

2. Duty of Care Framework

This policy is an overarching document that provides key elements of the College's approach to support the College and its staff to meet their duty of care. This Policy forms part of the Duty of Care Framework and sets out the detailed policies, work systems, priorities and culture that St Leonard's College is committed to build to achieve a safe environment.

3. Scope

This policy applies to:

- College Council;
- Staff, volunteers and contractors whether or not they work in direct contact with students;
- External education providers and Allied Health Providers; and
- Ministers of Religion.

4. Introduction: What is a Duty of Care

A duty of care is a legal obligation to avoid acts or omissions that could foreseeably lead to harm to another person. A breach of a duty of care that leads to harm to someone amounts to the tort of negligence. In Victoria, the law of negligence is governed by the *Wrongs Act 1958*, and by the *Common Law*.

In broad terms, the legal position is that if a person is injured as a result of a negligent act or omission of another, the injured person would be able to claim under civil liability laws and seek compensation for loss and damages resulting from negligence. 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).

To successfully bring a compensation claim in negligence, a person must establish on the balance of probabilities, that:

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- A duty of care was owed to them at the time of the injury;
- The risk of injury was reasonably foreseeable;
- The likelihood of the injury occurring was more than insignificant;
- There was a breach of the duty of care or a failure to observe a reasonable standard of care; and
- This breach or failure caused or contributed to the injury, loss or damage suffered.

Duty of care obligations are not absolute, or to ensure that no harm will ever occur, but a duty to take reasonable care to avoid foreseeable risks of harm occurring, meaning protection not only 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” person. This means that the duty of care owed is the duty one would expect from a hypothetical reasonable person with regular skills and attributes exercising their professional judgment.

These laws limit liability in certain circumstances including, in broad terms:

- The College does not owe a duty of care to warn of an “obvious risk”;
- The College will not be liable for harm suffered as a result of the materialisation of an “inherent risk”; and
- However, the College and each staff member must ensure that ‘reasonable precautions’ are in place to provide a quality standard of care.

In Victoria since 1 July 2017, and only specifically in relation to child abuse claims, there is a ‘presumption of liability’ for Schools. This means that school staff need to prove that they took ‘reasonable precautions’ to prevent child abuse by an individual associated with the school.

The duty of care is “non-delegable”

Duty of care is non-delegable meaning that it cannot be assigned to another party and duty of care responsibilities cannot be delegated or passed to another person or organisation. The College and its teachers continue to have duty of care responsibilities even when College activities are being undertaken and managed by third parties, volunteers and contractors or, for example, sports associations or transport providers. The legal term “non-delegable duty of care” is used to describe the duty of care responsibilities of Colleges and teachers.

This legal concept underpins, and to a large extent drives, many of the College’s policies and practices.

However, this does not mean that only one person holds a duty of care to a particular student at any one time. Multiple staff may have a duty of care to the same student, with differing responsibilities and roles to play in relation to the school discharging its overall duty of care. The precise scope of each staff member’s duty of care may be different. For example, a Principal is not required to personally supervise every student at lunchtime to discharge their duty but instead is responsible for establishing and monitoring a system for supervision that is shared amongst staff. Another staff member may be responsible for preparing the yard duty roster and each staff member rostered onto yard duty will have a duty of care to take reasonable steps in relation to any foreseeable risks to students arising at lunchtime which may include:

- Monitoring specific students where there are known risks;
- Generally monitoring all students and intervening where there is inappropriate student behaviour; and
- Responding to accidents and taking appropriate measures to follow up any incidents that have occurred, which may involve ensuring that the incident is reported to another staff member with responsibility for further action.

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5. Policy Statement

Duty of Care applies whenever the students are under the authority and control of the College or its teachers, including during campus and off campus activities, camps, excursions, sports activities, playground activities and both before and after College when students are present on the College campus.

The duty of care means:

- To ensure that all staff and volunteers who supervise students need to understand that the College and its teachers owe a duty of care to our students and make sure that they speak and act appropriately including supervising, controlling and directing students, as required, to ensure that the College meets its duty of care responsibilities.
- To take reasonable measures, with regards to all circumstances, to protect students from risks of harm and injury that should have been reasonably 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.
- To take reasonable care that any student (and any other person) on the premises will not be injured or damaged because of the state of the premises, including things done or omitted to be done to the premises.
- To take reasonable precautions to prevent the abuse of a child by an individual associated with the College while the child is under the care, supervision or authority of the College.
- That the College acknowledges that different and sometimes greater measures may need to be taken for younger students or students with disabilities to discharge this duty of care as they require more care and may be exposed to higher levels of risk. The College will ensure that particular management and safety plans are in place for each respective student with extra needs and/or vulnerabilities of diverse student groups or individual circumstances.

To undertake an assessment of the risks of harm and injury and ensuring that measures are put in place to prevent those risks of harm from materializing.

Standard of Care – Teaching Staff

The duty owed by the College and by our teachers is to take reasonable care: the standard of care that a reasonable teacher would take to prevent harm and injury. This means that the duty of care owed is the duty one would expect from a hypothetical teacher with teaching skills and attributes exercising their professional judgement. It is not a duty to ensure that no harm will ever occur, but a duty to provide reasonable care to avoid harm being suffered or foreseeable risk of injury. Individual teachers can be sued if they fail in their duty of care as a result of their negligence.

It can be argued that the standard of care required of a teacher is greater than that expected of a parent or guardian, given that a teacher is a trained professional educationalist. The law expects a teacher to act as an 'ordinary, reasonable' educator rather than a 'good and careful' parent or guardian.

Standard of Care – Non-Teaching Staff, Volunteers & External Providers

The requirement to take reasonable steps to reduce the risk of reasonably foreseeable harm, continues even when another party is involved (for example, a third-party providing services for an excursion or College camp).

Non-teaching staff, volunteers (including parent volunteers), contractors and external providers (onsite) also owe a modified duty of care to protect students from risks of harm that ought reasonably to be foreseen. This duty only exists when the duty is consciously passed from a teacher to a non-teaching staff member, volunteer

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or provider, and accepted by that individual. A common example of where a teacher asks a non-teaching staff member to accompany a student to a different area of the College.

What is Reasonable

The duty of care is framed in terms of taking reasonable care to protect students from harm. The word 'reasonable' is not defined and is, in the end, a judgment made about the risk of harm.

The College and our teachers must ensure that they have identified the foreseeable risks of harm associated with all College activities and taken such measures as a reasonable teacher (or reasonable College) would take to prevent the harm of injury from occurring. "College activities" includes academic and non-academic activities, inside the classroom and outside the classroom, sports and physical education, excursions, extra curricular and cocurricular activities, camps and outdoor education activities. All these activities require that the foreseeable risks of harm are identified and measures put in place to prevent those risks from occurring. Teachers and other staff, including volunteers, must ensure they understand the measures that are in place to prevent the harm from occurring and make sure these measures are effectively implemented. Judgement of what is reasonable care may be made by conducting a formal or informal risk assessment, which should be documented.

What is reasonable will vary depending on the individual circumstances. Factors that should be considered when deciding what is reasonable in all the circumstances include:

- The vulnerability of the student(s), for example, in relation to age, cultural background or students with a disability;
- Medical conditions: special care must be taken to protect students with medical conditions that are known or ought to be known, and 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;
- How the benefits of the activity or situation are balanced with the risk of the activity being harmful. For example, the College may consider that the benefit of a water sports activity outweighs the risk of injury to a student;
- The nature of hazards present: increased care is required if the College activity has an inherently high level of risk of injury or the activity takes place in a hazardous environment;
- Any conflicting responsibilities the College or teacher may have. The extent to which a duty of care for one group of students conflicts with a duty of care to another group of students;
- The cost, difficulty or social impact of taking a particular action. For example, the social impact of minute-by-minute close supervision, whilst designed to reduce the likelihood of injury, could be considered overly protective;
- Normal practices and procedures within the College;
- Whether or not it is likely that harm will occur if a different action—or no action—is taken;
- Whether or not the harm might be foreseen;
- The potential seriousness of the harm that could occur.

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

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6. Role and Responsibilities

College Council	<p>To assist the College to discharge its safety responsibilities, the College has implemented:</p> <ul style="list-style-type: none"> a Child Safety and Wellbeing Framework to ensure compliance with the Child Safe Standards and Ministerial Order 1359. an Occupational Health & Safety Framework 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 Risk Management Framework through which we identify, manage and mitigate potential risks to the College: <ul style="list-style-type: none"> Risk registers across various areas of the College to assist in risk management for: <ul style="list-style-type: none"> College wide – Executive Team and the College Council; International Students; and Consent2Go to identify, assess and mitigate risks associated with incursions, excursions, overnight camps and tours, for the purpose of assessing student safety risks. Student Behaviour program is in place. Student Health Program is in place. an Incident Management Policy and program. a contractor and third-party management program that ensures that contractors and third parties (both academic and non-academic) are suitable and able to undertake the activity or program with the required degree of care and skill so as to prevent foreseeable risks of harm to our students. The College is required to communicate the policies and procedures that ensure we are upholding our duty of care responsibilities, take reasonable steps to ensure any personal information it collects is accurate, up-to-date and complete and provide training to staff where appropriate.
Principal	<ul style="list-style-type: none"> Ensure effective compliance with the Child Safe Standards and Ministerial Order 1359. Ensure full and proper implementation of policies by all staff, as a reasonable step to prevent foreseeable harm. Ensure the provision of suitable and safe premises. Ensure effective risk and hazard identification, isolation, reporting procedures and management programs exist. Ensure training is provided to staff and students in safety policies and procedures. Ensure that appropriate medical assistance is provided to a sick or injured student. Ensure systems exist to support student medical management.
Executive Team	<ul style="list-style-type: none"> Ensure staff are always complying with their duty of care obligations. Ensure that appropriate supervision requirements and staff ratios are met, relevant to the context, to ensure individual staff members can safely comply with their duty of care requirements. Ensure that regular inspections of College's buildings, facilities and grounds to maintain safe environment are undertaken to identify potential safety hazards. Ensure staff complete relevant training. In respect of every adverse event ensure the safety of students under the terms of the Safety Management Plan, adequate return after an absence relating to an incident and ensure return to College is governed by the terms of a Return to College Plan.
Staff	<ul style="list-style-type: none"> Staff must understand their duty of care and obligations. Staff must ensure they make reasonable steps to reduce the risk of reasonably foreseeable harm to students, and apply mitigation strategies as appropriate (likelihood, consequence, context).

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	<ul style="list-style-type: none"> • Must not delegate their duty of care to a third party (non-staff member) at any time. • Understand that in some circumstances, a school's duty of care will extend beyond school hours and outside of school grounds. • May appropriately delegate their duty of care to another member of staff, with appropriate communication in place. • Must provide evidence of duty of care obligations through: <ul style="list-style-type: none"> - Accurate recording of incursions / excursions in Consent2Go; - Review and recording of risk assessment and mitigation activities; - Reporting of incidents through the College incident reporting system; - Compliance with all College policies.
Non-Teaching Staff	<ul style="list-style-type: none"> • May assume duty of care responsibilities for a student if directed to do so by a member of teaching staff. • Must know and understand their duty of care obligations. • Report any observations or actionable matters which constitute an Incident, near miss or a hazard via Incident Reporting link on STL Link.
Students and Families	<ul style="list-style-type: none"> • Students and parents/ guardians must provide all relevant personal and medical information pertaining to their child, to ensure the College can provide appropriate levels of care as required by that student. • Parents must advise the College as soon as reasonably possible of any situation which may impact on the health and safety of either their child, or of the other children at the College.

7. Communication

This Policy is publicly available on the College website. Staff can access this policy and all policies relating to student safety via the STL Link (the College intranet).

8. Reporting any concerns

Any adult who witnesses or suspects any breach of this policy must report it to the Principal and raise an Incident Report located on STL Link as soon as reasonably possible.

If the breach or suspected breach relates to the Principal, contact the College Chair on CollegeChair@stleonards.vic.edu.au

Anyone making any such reports in good faith will be protected from victimisation or other adverse consequences.

9. Compliance with this Policy

Any staff, volunteer, contractor, service provider, College Council member or any other adult undertaking work at the College who breaches the Duty of Care Policy may be subject to disciplinary procedures in accordance with their employment agreement or relevant industrial instrument, professional code or terms of engagement.

10. Records Management

The College creates, manages and appropriately disposes of records in accordance with the Public Records Office Victoria (PROV) Recordkeeping Standards, including minimum retention periods and will, where relevant, take into account any policy or guidance concerning records keeping requirements outlined in the [Department of Education policy](#).

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11. Grievance Process

We foster a culture that encourages staff, volunteers, contractors, children and young people, parents, and the College community to raise any compliments, concerns and/or complaints. We have clear, culturally safe, accessible and easy to understand reporting and responding pathways documented in the [College Grievance Policy](#). The school community may provide feedback on this document by emailing: compliance@stleonards.vic.edu.au.

12. Approved by

Peter Clague, Principal



Signature

21st November 2024
Date

13. Endorsed by

Jen Neate, Chair of College Council



Signature

21st November 2024
Date

14. Governance Table

Record Number	POL-DOC-001-01
Accountabilities	
Owner	Principal
Responsible Officer	Deputy Principal
Approver	College Council
Reviewer	Risk and Compliance Manager
Review cycle	This Policy is reviewed every three years, or sooner if a change in legislative requirements or a serious incident has occurred. The Duty of Care Policy is approved by the Principal and endorsed by the school's governing authority, the College Council.
Authority	
Legislative Compliance	The Victorian Registration Standards (sch 4 cl 12) require the College to ensure that the care, safety and welfare of all students attending the College is in accordance with any applicable State and Commonwealth laws, and that all staff are advised of their legal obligations under those laws. Under the VRQA Guidelines the College is required to provide evidence in the form of the College's policies and procedures with respect to the duty of care owed to students . These laws limit liability in certain circumstances including, in broad terms: 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).

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	<p>This policy is made under the Victorian Registration Standards (sch 4 cl 12) and supports compliance with:</p> <ul style="list-style-type: none"> • <i>Wrongs Act 1958 (Vic)</i> • Civil liability laws in Commonwealth and all Australian States and Territories that apply in relation to claims for damages resulting from negligence • This policy monitors and incorporates information from and supports compliance with student safety policies regularly published by the government departments and health and industry associations
Related Documents	<p>Student Safety and Wellbeing Framework</p> <ul style="list-style-type: none"> • Child Safety and Wellbeing Policy • Child Safety and Wellbeing Code of Conduct • Child Safety Response and Reporting Procedures • Staff-Student Boundaries Policy • Pastoral Care and Student Wellbeing Policy • Online Community Guidelines • Online Safety • Diversity and Inclusion • Excursion Policy <p>Student Behaviour Program</p> <ul style="list-style-type: none"> • Behaviour Policy • Behaviour - Appendix B - Process for Managing a Serious Incident • Anti-Bullying (Student) Policy • Anti-Harassment (Student) Policy • Student Attendance Policy • Supervision Policy • Supervision - Before and After School Guidelines • Supervision & Inspection - Playgrounds Policy • Communication with Parents • Access Arrangements and Communication with Separated Parents Guardians • Acceptable Use of Information Communication Technology Policy • Confiscation of Student Property • Consent of Parents for Counselling Services • Disability Discrimination (Students) • Gender Identity Policy • Student Images Management Policy • Student Driver • Use of Alcohol Policy (Student) • Assault (Student against Student) • Smoking, Vaping and e-Cigarettes Policy (Student) • Use of Illicit Drugs (Student) Policy • Restraint and Seclusion Policy • Student Use of Mobile Devices Policy and Procedures • Student Use of Social Media Policy and Procedures • Truancy Policy and Procedures <p>Student Health Program</p> <ul style="list-style-type: none"> • Health Centre Visits by Students • Asthma Management • Anaphylaxis Management • Allergy Awareness • Anaphylaxis Communication Plan

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	<ul style="list-style-type: none">• Infectious Diseases• Medical Records (Students)• Medication Administration (Students)• Attention Deficit-Hyperactivity Disorder• Concussion Policy• Diabetes Management• Eating Disorders• Head Lice• Bites and Stings• Individual Health Care Plans (High Risk Students)• Drug Intervention and Prevention (Students)• Seizure and Epilepsy• Self-Harming Behaviours• Sun Protection (Students)• Heat Stress			
Definitions and Acronyms				
“Student”	a student that is currently enrolled at the College			
“Adverse Event”	<p>includes an accidental drug overdose or other accidental action that may have resulted in the Student’s death but did not. Common examples of adverse events that affect Students include accidents (such as traffic, car or physical accidents), assault (including physical or sexual assault, mugging or robbery, or family violence), and witnessing something terrible happen.</p> <p>“Attempt” refers to a Student deliberately harming themselves with the intent to die but not resulting in death.</p> <p>“Incident” refers to an Attempt, NSSI or an Adverse Event.</p> <p>“NSSI” or “Non-suicidal self-injury” is a deliberate act to harm oneself without the intent to die, usually to reduce uncomfortable or distressing emotions and often repetitive in nature. NSSI can be referred to as self-harm (the term deliberate self-harm is also used by health care professionals).</p>			
“Actionable Matter”	<p>means any actual or alleged event or situation that:</p> <p>a) causes harm or creates a risk of causing harm to a Student’s health, safety and wellbeing either directly or indirectly while under the care or supervision of the College, including international students;</p> <p>b) impacts a student and is brought to the attention of the College, regardless of when or where it occurred, provided it is impacting on the Student or other Students within the College environment; or</p> <p>c) is otherwise reportable under one of the College’s policies relating to child safety, including but not limited to the child safety policy, the child safety code of conduct and the reportable conduct procedure.</p>			
Revision History				
Version	Reviewed by	Date	Brief summary of changes	Approved by
Student Duty of Care (Summary Obligations)		27/10/ 2022	Current Policy	
DRAFT POL-DOC-001-1	Deputy Principal Risk and Compliance Manager	31/10/2024	Rewrite of the Duty of Care Policy	
POL-DOC-001-1	Principal	12/11/2024		Principal
POL-DOC-001-1	College Council	21/11/2024		College Council