



MARIAN COLLEGE ARARAT

Marian College – Duty of Care Policy

Background

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 Marian College's policies and practices.

This policy attempts to explain, in plain English:

- 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.

Source of Obligation

The Victorian Registration Standards (sch 2 cl 12) require that the college must ensure that the care, safety and welfare of all students attending the college is in accordance with any applicable state or Commonwealth laws, and that all staff are advised of their legal obligations under those laws.

Under the Guidelines Marian 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.

Duty of Care owed to Students

Marian College, its Principal and its staff owe a duty to take care of students whilst they are involved in college activities, or are present for the purposes of a college activity. This duty of care is non-delegable meaning that it cannot be assigned to another party.

In accordance with the Guidelines, the college's 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; and
- take reasonable care that any student (and other person) on the 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 taken.

Standard of Care: Teaching staff

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.

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 is only undertaken when the duty is consciously passed from a teacher to a non-teaching staff member, volunteer or 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 college. 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.

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 (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 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; and
- normal practices and procedures within the college.

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 college does not owe a duty of care to warn of an "obvious risk"; and
- the college 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 college 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.

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

To assist the college to discharge its safety responsibilities, Marian College has developed an [Occupational Health & 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.

Against each identified student safety 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 through the college intranet. All policies relating to student safety are set out under the Student Duty of Care menu on our intranet.

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

