



Catholic College Sale

DUTY OF CARE POLICY

1.0 POLICY AUTHORITY

The Board of Catholic College Sale Limited ('the Board') governs the College. Based on the principle of subsidiarity and in keeping with the Board's Delegations Schedule, the Board delegates a broad range of duties, functions, powers and authority to the Principal of Catholic College Sale (CC Sale). This includes the effective implementation of this *Duty of Care Policy* and the compliance obligations outlined herein.

2.0 INTRODUCTION

Duty of care requires Catholic College Sale (CC Sale) employees to take all reasonable steps to reduce risk, including:

- provision of suitable and safe premises to ensure that persons on the premises will not be injured or damaged because of the state of the premises, including things done or omitted to be done on the premises;
- taking reasonable steps to reduce the risk of reasonably foreseeable harm;
- 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;
- prevention of child abuse by an individual associated with the College.

In alignment with Victoria's Child Safe Standards under Ministerial Order No. 1359, greater measures to discharge this duty of care may be needed for Aboriginal students, students from culturally and/or linguistically diverse backgrounds, students with a disability, those unable to live at home, international students, and lesbian, gay, bisexual, transgender and intersex (LGBTIQ+) students.

An employee's duty of care is non-delegable, meaning that it cannot be assigned to another party.

3.0 PURPOSE

CC Sale employees are held to a high standard of care in relation to students. This policy explains the legal duties owed by College employees towards students.

4.0 LEGAL BACKGROUND

"Duty of care" is an element of the tort of negligence. In broad terms, the law of negligence provides that if a person suffers injury as the result of a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence.

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

- 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;
- this breach or failure caused or contributed to the injury, loss or damage suffered.

The fact that a duty of care exists does not mean that CC Sale will be liable for an injury sustained by a student. In order for the student to succeed in a negligence claim, all of these elements must be established.

5.0 STANDARD OF CARE REQUIRED

The Principal and teachers are held to a high standard of care in relation to students. They are required to take reasonable steps to minimise the risk of reasonably foreseeable harm, including:

- ensuring they comply with the Victorian Child Safe Standards (Ministerial Order No. 1359);
- provision of suitable and safe premises to ensure that persons on the premises will not be injured or damaged because of the state of the premises, including things done or omitted or to be done on the 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;
- managing employee recruitment, conduct and performance;
- sharing information with another prescribed Information Sharing Entity (**ISE**) in relation to a child's wellbeing or safety under the Child Information Sharing Scheme (**CISS**) and/or sharing information with another prescribed ISE under the Family Violence Information Sharing Scheme (**FVISS**);
- prevention of child abuse by an individual associated with the College.

Whenever a teacher-student relationship exists, teachers have a special duty of care. Generally, teachers are expected to take such measures as are reasonable in the circumstances to protect a student under their charge from reasonably foreseeable risks of injury.

The nature and extent of this duty will vary according to the circumstances. For example, the standard of care required is higher when involving students in water-based activities than when teaching a group of Year 12s in the classroom.

The important issue in all cases is what precautions College staff could reasonably be expected to have taken to prevent the injury from occurring. This involves consideration of the following factors:

- identifying the risk of harm;
- the probability that the harm would occur if care were not taken;
- the likely seriousness of the harm;
- the burden of taking precautions to avoid the risk of harm;
- the social utility of the activity that creates the risk of harm.

Additionally, any enrolled international students under the age of 18 (who are not being cared for by a parent or suitable relative) are expected to have a comprehensive homestay policy and procedures in place to assess and monitor the suitability of accommodation arrangements.

5.1 Duty of care to students outside the school

The law has established that, in some circumstances, a school's duty will extend beyond school hours and outside of school grounds. The duty will be extended to outside school hours and premises when the relationship between the school and the student requires it in the particular circumstances. For example, in some circumstances, schools may be liable for injury sustained by students in school yards/outdoor areas before school begins for the day, particularly if it occurs during the period of time for which the school yards/outdoor areas are supervised.

The College informs parents when outdoor supervision is provided and that no formal supervision of the College grounds occurs outside those hours. Similarly, some risks outside of school will involve informing parents of bus arrangements and leaving it to parents to make appropriate arrangements for transporting their children to and from school.

6.0 NEGLIGENT ADVICE: TEACHERS

Teachers are frequently called upon to advise students. When doing so, teachers should:

- limit their advice to areas within their own professional competence and given in situations arising from a role specified for them by the Principal;
- ensure that the advice they give is correct and in line with the most recent available statements from education authorities and other respected professional bodies.

Careers teachers and coordinators at senior levels should keep contemporaneous notes of advice given to individuals. They avoid giving advice in areas unrelated to their role or where they may lack expertise.

7.0 LEGISLATION AND REFERENCES

- Child Wellbeing and Safety Act 2005 (Vic.)
- Child Wellbeing and Safety (Information Sharing) Regulations 2018
- Family Violence Protection Act 2008 (Vic.)
- Family Violence Protection (Information Sharing) Regulations 2018
- Victorian Institute of Teaching (VIT) Code of Conduct and Ethics
- State of Victoria, *Child Safe Standards - Managing the Risk of Child Abuse in Schools and School Boarding Premises*, Ministerial Order No. 1359
- Department of Education and Training (DET) 2018, *PROTECT: Identifying and responding to all forms of abuse in Victorian schools*
- Department of Education and Training (DET) 2018, *PROTECT: Identifying and Responding to Student Sexual Offending*

8.0 RELATED COLLEGE POLICES

- Anaphylaxis Management Policy
- Anti-Bullying and Bullying Prevention Policy
- Child Safety Code of Conduct
- Child Safety and Wellbeing Policy
- Child and Family Violence Information Sharing Schemes Policy
- Critical Incident Management Policy and Plan
- Cyber Safety Policy
- Emergency Management Policy and Plan
- First Aid Policy
- Occupational Health and Safety Policy
- OFF-site Supervision of Students Policy
- ON-site Supervision of Students Policy

- Privacy Policy
- Responding to and Reporting Child Safety Incidents and Concerns Policy
- Student Attendance Policy
- Student Health Care Needs Policy
- Visitors on Campus Policy

9.0 MONITORING AND REPORTING

The Board is responsible for monitoring the implementation of this policy and for providing reports as required to the members of the company, i.e., the Bishop of Sale and the Provincial of the Marist Brothers Australia Limited (MSA Ltd).

The Principal is responsible for:

- Ensuring compliance with the obligations outlined in this policy;
- Assigning authority, responsibility and accountability at appropriate levels within the College for policy implementation and compliance;
- Providing delegated staff with the direction, support and resources necessary to fulfil policy requirements;
- Ensuring cyclic reviews of the policy and recommending to the Board any revisions that may be required to accommodate changes in legislation and diocesan directives;
- Reporting and escalating concerns, issues and policy breaches to the Board and working collaboratively with the Board to resolve them.

10.0 APPROVAL

Approved by	CC Sale Ltd Board
Person(s) Responsible	Principal
Date(s) Reviewed or Updated	June 2022
Next Review Date	June 2024