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RELATED DOCUMENTS: Legislation:

Child Wellbeing and Safety Act 2005
Child Safe Standards 2022
Disability Discrimination Act 1992 (Cwth)
Occupational Safety and Health Act 2004
Occupational Safety and Health Regulations 2017
Gender Impact Assessment, Gender Equality Act 2020 (Vic)
Date completed: 9/01/2024

Documents:

PPP013 Inclusion and Diversity Policy
PPP036 Child Safety and Wellbeing Policy
PPP012 Child Safety and Wellbeing Guidelines
PPP083 Staff Code of Conduct
PPP083a Code of Conduct – Child Safety
PPP147 Student Excursion Guidelines
PPP284 Reportable Conduct Scheme Guidelines
TL112 Student Excursion Checklist
PPP130 Management of Medical Conditions Guidelines
BP006 Enrolment of Compulsory School Aged students
[Child Safe Standards – Information for Young People](#)
[Child Safe Standards Translated Resources](#)
[CCYP Reportable Conduct Scheme](#)

1. Introduction

Duty of care refers to our moral or legal obligation to ensure the safety and wellbeing of others. It requires us to take reasonable steps to minimise the risk of reasonably foreseeable harm. Duty of care creates presumption of liability, such that South West TAFE (SWTAFE or the 'Organisation') would need to prove that 'reasonable precautions' to prevent harm were taken.

Any activities undertaken by children/minors involve risk. Therefore, particular attention must be given to ensuring their safety, health and welfare. When children/minors are involved, the duty of care principle not only underpins, but to a large extent drives SWTAFE's guidelines and practices. In a Vocational Education and Training (VET) setting consideration must be given on how to achieve a balance between the meticulous supervision of students and the desirable objective of encouraging their independence and advancing their education. The nature and extent of the duty and what constitutes reasonable care will vary according to the circumstances and is based on a number of factors including, but not limited to:

- the student's age, experience and capabilities;
- any physical and intellectual impairment;
- medical condition(s);
- behavioural characteristics;
- the nature of the program being delivered; and the nature of the environment

2. Scope

These Guidelines apply to SWTAFE employees and students of any age, and explain the nature of legal duties owed by SWTAFE staff towards our students.

3. Definitions

Duty of Care	Is a legal concept that has its origins in common law. It is a duty imposed by the law to take care to minimise the risk of harm to another
Child / minor	A child / minor is a person under the age of 18
Vulnerable students	<p>The term “vulnerable student” considers the student’s</p> <ul style="list-style-type: none"> • age and experience– and particularly applies to any student under 18 years of age • Physical and intellectual impairment • Medical conditions • Cultural and linguistic background • Social identity • Exposure to family violence and related issues
CCYP	Commission for Children and Young People
Premises	Refers to a building, external area or equipment that is under the ownership and/or control of South West TAFE.

4. Principles

These Guidelines are based on the following principles:

- The principle of reasonable care varies according to the circumstances, however the principle of “reasonable” will be higher for a vulnerable student.
- All staff have the responsibility to report any incidents stated under the Child Safety Standards in a timely, confidential manner in line with South West TAFE’s **PPP012 Child Safety & Wellbeing Guidelines & PPP083a Code of Conduct – Child Safety**.
- Staff are held to a high standard of care in relation to students, irrespective of their age. In addition to their professional obligations, teachers and support staff have a legal duty to take reasonable steps to reduce and protect students in their care from risks of injury and/or harm that are reasonably foreseeable.
- The Organisation recognises that whenever a student - teacher relationship exists, the teacher has a special duty of care. This has been expressed as: ‘a teacher is to take such measures as are reasonable in circumstances to protect a student under the teacher’s charge from risks of injury that the teacher should reasonably have foreseen’
- As an education provider, SWTAFE owes a non-delegable duty of care to students regardless of the person performing that duty.
- The duty owed to minors is not to ensure that no harm will ever occur, but rather a duty to take such measures as are reasonable in all circumstances to protect students from risks of harm that reasonably ought to be 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.
- SWTAFE owes a higher duty of care to minors participating in our programs. That is, a duty to take reasonable care for their health and safety. The duty arises out of the teacher/student relationship and exists whether students are on SWTAFE premises or engaged in course related off campus activities.
- In discharging their duty of care responsibilities, staff must exercise their professional judgement to achieve a balance between ensuring that students do not face an unreasonable risk of harm, and encouraging student’s independence and maximising their vocational learning opportunities.

- Specialist staff, volunteers and external providers who perform tasks that require them to engage with students including minors, also have a duty to take reasonable measures to protect students from risk of harm that reasonably ought to be foreseen.
- The Organisation has an obligation to maintain our premises and equipment in a fit for purpose condition. In doing so, we will take all reasonable care that any student and/or 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 state of the premises.

5. Vulnerable students

- Physical and intellectual impairment – a student with a disability may be exposed to a higher level of risk of injury than a student without a disability. This may be because the student with a disability suffers from an impairment of motor skills or physical coordination, a lack of inhibition or control, or it may be because the student has a limited appreciation of the possibility of danger. Where the physical or intellectual disability is such as to enlarge the risk inherent in undertaking an activity.
- Medical conditions - Where students are afflicted by particular medical conditions, for example, diabetes, asthma, anaphylaxis, or epilepsy, special care must be taken to protect such students if their condition is known or ought to be known and exposes them to a special risk of injury, then appropriate precautions must be taken.
- Culturally and linguistic background – Where students cannot or have difficulty communicating in English, or are culturally isolated and do not understand Australian laws and norms, this particularly applies to international students and many recent migrants and refugees.
- Social Identity – Where a student is a member of the LGBTIQ community and may experience issues which are uniquely related to their social experience and identity. These students may be exposed to a higher level of risk of abuse or acceptance within their community.
- Aboriginal and Torres Strait Islander students
- Students who are unable to live at home (including victims of family and domestic violence).
- Students who are suspected or confirmed as experiencing family violence including elder abuse, issues with ex family members, protective orders or restricted access.

6. Guidelines

The general duty requires all staff to take all reasonable steps to protect students from reasonably foreseeable risks of injury and/or harm.

- Where a student is a minor, a duty of care is not confined to the geographic area of the organisation but to all course related activities, including activities occurring outside SWTAFE grounds where a minor student is acting on a teacher's instructions. The duty also applies to situations both before and after class where a teacher can be deemed to have assumed the teacher - student relationship.
- Apart from mandatory reporting requirements, a teacher has a concurrent duty of care to protect a student from harm that is reasonably foreseeable. A breach of this duty of care may lead to legal action being taken against the individual teacher or teachers concerned. A breach of this duty of care will be established if a staff member failed to take immediate and positive steps after having acquired actual knowledge or formed a belief that there is a risk that a child/minor is being abused or neglected.
- Whilst each case regarding a teacher's legal duty of care will be judged on the individual circumstances, common examples of when a teacher has failed to meet their legal duty of care responsibilities to their students are:
 - ♦ Arriving late to scheduled timetabled responsibilities
 - ♦ Failing to act appropriately to protect a student who claims to be bullied
 - ♦ Believing that a child/minor is being abused but failing to report the matter appropriately
 - ♦ Leaving students unattended in the classroom
 - ♦ Inadequate supervision on an excursion
 - ♦ Failing to monitor and address reported cyber bullying
- Reasonable steps to reduce risk could include:
 - ♦ 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
- ♦ Managing employee recruitment, conduct and performance
- 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 staff member's own professional competence and given in situations arising from a role specified for them such as career's teacher. Staff should always be aware of cultural and linguistic cultural difference and the needs of a person with a disability.
- All staff, but particularly teachers are required to treat their students with courtesy and dignity, respecting a student's privacy on sensitive matters, such as health, family problems or previous unlawful activity, and only reveal confidential matters when appropriate. That is:
 - ♦ If the student has consented to the information being used in a certain way.
 - ♦ To present or lessen a serious threat to life, health, safety or welfare of a person (including the student)
 - ♦ As part of an investigation into unlawful activity at the request of the investigator.
 - ♦ If the disclosure is required or mandated by law.
 - ♦ To prevent a crime occurring.

7. Classroom Supervision

- It is not appropriate to leave students unsupervised.
- Discretion is to be used when allowing students who are minors to leave the class unsupervised during class time.

8. Excursions and Camps

- Refer to **PPP147 Student Excursion Guidelines** and **TL112 Student Excursion Checklist**
- Camps and excursions require the teacher to fully comply with **PPP147 Student Excursion 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.

9. Risks to students outside the South West TAFE 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 SWTAFE environment. However, the important issue in all cases will be whether reasonable steps were taken to protect the student from the risk.
- Risks outside the SWTAFE environment may sometimes call for immediate and positive steps depending on the age of students, urgency and threat of injury.
- There will be a number of other situations where staff and South West TAFE will be under a duty to take reasonable steps. In some instances, SWTAFE's control over the activity may require more active measures to be taken than in situations where we do not hold control of the activity, for example, a student harassing another student on campus can be expelled, whereas fights at a local bus stop between students from a secondary school and TAFE may involve informing the police, contacting the other school to implement preventative measures, and notices to parents and students.
- While students who are children/minors are generally free to move around the buildings and work independently in break out spaces and designated study areas they must be under (indirect) adult supervision. Staff are responsible for all of their students.

10. Reporting Suspected Abuse or Neglect

- SWTAFE's nominated Child Safety Officer is the Team Leader – Student Wellbeing. They are delegated with specific responsibility for responding to any complaints/concerns made by staff, volunteers, parents or students in relation to child safety. Communications will be treated confidentially on a "need to know basis".
- SWTAFE's Child Safe Program ensures that the Child Safety Officer is trained and able to provide detailed guidance as to how to identify key risk indicators of child abuse and how to report child abuse concerns. The Program also contains detailed procedures with respect to the reporting of child abuse incidents to relevant authorities.

- Staff, contractors, external education providers, students, parents/carers or other community members who have concerns that a child may be subject to abuse are asked to contact the Child Safety Officer or report their concerns directly to an appropriate external authority.

11. Reportable Conduct Scheme (CCYP)

The Victorian Reportable Conduct Scheme seeks to improve organisations' responses to allegations of child abuse and neglect by their workers and volunteers. The scheme is established by the Child Wellbeing and Safety Act 2005 (the Act). The Reportable Conduct Scheme is focused on worker and volunteer conduct, and how organisations investigate and respond to allegations of child abuse. From 1 July 2024, organisations will also need to notify the Commission about reportable allegations for labour hire workers, secondees, directors of companies and individual business owners and investigate under the Scheme. The Reportable Conduct Scheme does not replace the need to report allegations of child abuse, including criminal conduct and family violence to Victoria Police. Refer to PPP284 Reportable Conduct Scheme for detailed information. Additional references: [CCYP Reportable Conduct Scheme](#)

12. Reporting & Record Keeping

Data on complaints, investigations or incidents relating to Child Safety is collected in a Central Register and managed in-line with legislative and privacy requirements. Actions taken to investigate and resolve the issue are recorded. Any reporting to third parties will only use de-identified data. Where data indicates systemic issues and causes items will be added to the Continuous Improvement Register for further action.

13. Diversity, Equity & Inclusion

SWTAFE is committed to making diversity, equity and inclusion part of everything we do, including in the implementation of this policy/procedure/guideline. This document was the subject of a comprehensive access and equity assessment (also known as a Gender Impact Assessment), as per the requirements of the Gender Equality Act 2020 (Vic). For more information, please visit the 'Our Values' page on our website [external] [website](#) ECHO [internal]. [Diversity, Equity & Inclusion \(DEI\)](#)

14. Statement of Commitment to Child Safety

South West TAFE is committed to the protection of all children from all forms of child abuse and demonstrates this commitment through the implementation of a Child Safe Program designed to keep children safe within our organisation. For Child Safe key documents, resources, contact officer details please go to: [Child Safe Commitment](#)