



**Department of  
Education  
and Training**

## **DUTY OF CARE FOR STUDENTS**

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## 1 POLICY

- a) Teaching staff owe a duty to take reasonable care for the safety and welfare of students whilst students are involved in school activities or are present for the purposes of a school activity. The duty is to take such measures as are reasonable in all the 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.
- b) In discharging their duty of care responsibilities, teaching staff must exercise their professional judgement to achieve a balance between ensuring that students do not face an unreasonable risk of harm and encouraging students' independence and maximising learning opportunities.
- c) When non-teaching staff, volunteers and external providers agree to perform tasks that require them personally to care for Students (in the absence of a member of the teaching staff), they will also owe a duty to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

## 2 BACKGROUND

### 2.1 INTRODUCTION

**Duty of care** is a legal concept that has its origins in the common law. The common law is a collection of legal principles that have been established over time by the courts. The duty of care principle not only underpins, but to a large extent drives, most school policies and practices. This policy attempts to explain, in plain English, what "duty of care" means, 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.

## 3 DEFINITIONS

### 3.1 CARING

Caring for students may assume different meanings depending on the context. However, examples include (but are by no means limited to) not putting students at risk by doing something or failing to do something that could cause the student to suffer injury or harm, taking precautions, intervening to prevent obvious hazards from causing injury or harm, following safety procedures and providing adequate instructions to students.

### 3.2 DUTY OF CARE

A duty imposed by the law to take care to minimise the risk of harm to another.

### 3.3 EXTERNAL PROVIDER

A business/individual paid by the school to provide a venue, service and/or expertise appropriate to a particular school activity; or

**Examples**

*Private dance or abseiling instructor, Perth Zoo, AQUA, Leeuwin Ocean Adventures, SciTech, Challenge Stadium Aquatic Centre.*

### 3.4 NON-TEACHING STAFF

Employees of the Department of Education and Training who are employed at the premises of a government school and who are not members of the teaching staff;

**Examples**

*Education assistants, registrars, school officers, farm supervisors and assistants, librarians and library assistants, laboratory assistants, Aboriginal & Islander Education Officers, home economics assistants, youth support officers, social trainers, exam supervisors.*

- school nurses;
- school chaplains; and
- school-based police officers.

### 3.5 REGISTERED TRAINING ORGANISATION (RTO)

An organisation registered by a state or territory recognition authority to deliver training and/or conduct assessments and issue nationally recognised qualifications in accordance with the Australian Quality Training Framework

**Examples**

*TAFE colleges and institutes, adult and community education providers, community organisations, schools, higher education institutions, commercial and enterprise training providers, industry bodies and other organisations meeting the registration requirements.*

### 3.6 SCHOOL ACTIVITY

An activity that is organised or managed by a member of the teaching staff or non-teaching staff as part of his or her duties.

**Guidelines**

*Where an activity is not a school activity, it is good practice to advise parents/guardians of that fact, and that the school assumes no responsibility for the supervision of students and for any aspect of the activity.*

*School activities may take place either on or away from school premises, and either during or outside of school hours.*

*In some circumstances, a duty may be owed to students who arrive early for the purposes of a school activity and whose presence is known or ought to be known by school staff (for example, see Appendix A, Duty of Care: School-Based Applications – Students on school grounds before school).*

*In some circumstances, a duty may be owed to students who remain at a place after participating in a school activity and whose presence is known or ought to be known by school staff (for example, see Appendix A, Duty of Care: School-Based Applications – Students on school grounds after the close of school).*

### 3.7 STUDENT

A person who is enrolled at a government school.

### 3.8 TEACHING STAFF

Has the same meaning as in section 237 of the *School Education Act 1999 (WA)* and regulations 127 and 127A of the *School Education Regulations 2000 (WA)*.

### 3.9 VOLUNTEER

An adult or organisation who/which offers services for school activities, but receives no remuneration from the school for the services provided.

#### **Example**

*Parents/guardians and other relatives, community members, employers who accept students on work placements, student teachers.*

## 4 RELEVANT LEGISLATION OR AUTHORITY

*School Education Act 1999 (WA), sections 63(1)(c) and 64(1)(e)*  
*School Education Regulations 2000 (WA), regulations 38 and 39*  
*Occupational Safety & Health Act 1984 (WA)*  
*Volunteers (Protection from Liability) Act 2002 (WA)*  
*Western Australian College of Teaching Act 2004*  
*Working with Children (Criminal Record Checking) Act 2004*  
*Working with Children (Criminal Record Checking) Regulations 2005*

### 4.1 RELATED DET POLICIES

The policies listed below will assist staff to meet their duty of care responsibilities in a range of circumstances:

*Child Protection*  
*Behaviour Management in Schools*  
*Community Service Program*  
*Departmental Insurance Covers – RiskCover Fund Guidelines*  
*Duty of Care-VET for School Students (VSS) Attending TAFEWA Colleges*  
*Excursions: Off School Site Activities*  
*Occupational Safety and Health*  
*Outdoor Education and Recreation Activities*  
*Risk Management within the Education and Training Portfolio*  
*Short Term School Visits/Study Tours for Overseas Students*  
*Smoking in the Workplace*  
*Workplace Learning Procedures and Guidelines*  
*Student Health Care*  
*Visitors on School Premises*

## 5 PROCEDURES

### 5.1 REASONABLE CARE

#### **Guidelines**

*The duty owed to students is not a duty to ensure that no harm will ever occur, but rather a duty to take reasonable care to avoid harm being suffered.*

*A person suffering harm will be entitled to damages (compensation) if he or she can establish that a member of the teaching staff, non-teaching staff, volunteer or external provider was negligent – that is, failed to take reasonable care – and the negligence was the cause of the person's harm (see Appendix B).*

What constitutes reasonable care will vary according to the circumstances, but the following factors, although not necessarily exhaustive, must be taken into consideration in assessing the 'reasonableness' of the level of care required for a particular student:

- The student's age, experience and capabilities;

The level of care will be high where young students are concerned but may be less in the case of mature post-compulsory students.

- Physical and intellectual impairment;

A student with a disability is generally 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 a school activity, then appropriate precautions must be taken.

- Medical condition;

#### **Guideline**

*Where students are afflicted by particular medical conditions, for example, haemophilia, asthma, a heart condition, brittle bones 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.*

- Behavioural characteristics;

#### **Guideline**

*The level of care is increased in the case of students who are known to behave in a manner that increases the risk of injury.*

- The nature of the school activity;

#### **Guideline**

*Increased care is required in relation to school activities with an inherently high level of risk of injury.*

- The nature of the environment in which a school activity is to be undertaken;

#### **Guideline**

*Increased care is required when students are placed in hazardous environments in which the potential risks of injury-related incidents are high.*

- Any conflicting responsibilities that the school or staff member may have; and
- Normal practices within the school and departmental policies and procedures.

## 5.2 ASSESSING THE RISK INVOLVED IN A SCHOOL ACTIVITY

When assessing the risk involved in a school activity, consideration must be given to the following factors:

- The probability of the risk occurring;

**Guideline**

*What is the likelihood of harm being suffered in the circumstances? Is it reasonably probable or so improbable as to be scarcely worth taking into account?*

- The magnitude of the risk; and

**Guideline**

*How serious may the consequences be if the risk is run and harm results? Are the potential consequences too great to justify running the risk?*

- The expense, difficulty and inconvenience involved in alleviating the risk.

**Guideline**

*What is to be gained by running the risk in order to undertake the school activity? What is to be lost if it is not undertaken? What alternatives are reasonably available, and with what risks or other disadvantages are they attended? How easy is it to take precautions against the risk? The easier it is to take precautions, the greater the obligation to take those precautions.*

## 5.3 TEACHING STAFF

- Teaching staff must care or provide for the care of students whilst students are involved in school activities or present for the purpose of school activities.

**Guidelines**

**When is a duty owed?**

*The duty of care owed by a member of the teaching staff to a student automatically arises out of the teacher-student relationship. Such a relationship will exist whenever and wherever a student is involved in a school activity or a student is present for the purposes of a school activity.*

*The teacher-student relationship is not necessarily confined to students enrolled at the school at which the member of the teaching staff is employed.*

**Example**

*A teacher who supervises a group of students from a number of different schools during an inter-school sports carnival will owe a duty to all of the students under his or her control to take such measures as are reasonable in all the circumstances to protect them from risks of harm that reasonably ought to be foreseen.*

**What does the duty encompass?**

*The duty encompasses a wide range of matters, including (but not limited to) <sup>1</sup>*

- (a) *provision of adequate supervision;*
- (b) *ensuring grounds, premises and equipment are safe for use by students;*
- (c) *implementing strategies to prevent bullying from occurring in school; and*
- (d) *rendering medical assistance (if competent to do so) to, or seeking assistance from a medically trained person for, a student who is injured or becomes sick at school.*

<sup>1</sup> It is possible that the duty extends to acting on a strong suspicion of physical, sexual or emotional abuse or neglect. In any event, the *Child Protection* policy requires school staff to report to the principal instances of student disclosure or signs of abuse or neglect.

**How may the duty be discharged?**

*In some circumstances a member of the teaching staff may only be able to discharge his or her duty of care by personally and directly caring for students whilst they are involved in school activities or are present for the purpose of school activities.*

**Example**

*Where a group of students are very immature and are known to 'play up' when supervised by anyone other than a member of the teaching staff.*

*In other circumstances however, it may be sufficient for a member of the teaching staff to entrust the care of students to a member of the non-teaching staff, a volunteer, an external provider or a member of the teaching staff from another school.*

- When deciding whether a member of the non-teaching staff, an external provider or a volunteer might personally care for students (without a member of the teaching staff also being present), teaching staff must satisfy themselves that the person is suitable for the task being assigned.

**Guidelines**

*Teaching staff may breach their duty of care if reasonable care is not exercised in choosing an appropriate person to care for students.*

*RTO lecturers, trainers and assessors also owe a duty of care to students attending their programs. Duty of Care-VET for School Students (VSS) Attending TAFEWA Colleges (located at: <http://policies.det.wa.edu.au>) provides advice on how schools and TAFEWA colleges discharge their duty of care responsibilities.*

- When making this assessment, teaching staff must consider factors such as the:
  - number of students involved;
  - age, experience, capabilities and behaviour of the students;
  - nature of the environment, premises and of the activity to be undertaken; and
  - age, ability, experience and general suitability of the proposed carer.
- Volunteers who perform "child related work" as defined in the *Working with Children (Criminal Record Checking) Act 2004* (located at: [www.slp.wa.gov.au](http://www.slp.wa.gov.au) or [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au)) and who are not eligible for an exemption, must provide a current Working with Children Check in accordance with the following schedule:

|  |                     |
|--|---------------------|
| Volunteers working with children 0-7 years inclusive   | By 31 December 2006 |
| Volunteers working with children 8-12 years inclusive  | By 31 December 2007 |
| Volunteers working with children 13-17 years inclusive | By 31 December 2008 |

- External providers must provide both a current national police certificate and a current Working with Children Check.

**Guideline**

*People exempt from having a Working with Children Check include:*

- *volunteers under 18 years;*



- *parents volunteering for school activities where they have a child enrolled in the school. (This exemption does not apply to volunteer parents attending overnight camps unless the parent is engaged in child related work for no more than 5 days in a calendar year);*
- *short term visitors to Western Australia carrying out child related work for 2 weeks after their arrival, and for no more than 2 weeks over a 12 month period; and*
- *workplace supervisors of students on work experience unless they otherwise carry out child related work.*

*More detailed information on the Working with Children Check is available by contacting the Department of Education and Training enquiries line on (08) 9264 4391 or by visiting the website located at [www.checkwwc.wa.gov.au](http://www.checkwwc.wa.gov.au)*

*Volunteers who are exempt from having a Working with Children Check and university staff members who are delivering an educational program to students, should be requested to complete a Confidential Declaration indicating whether or not they have any convictions or whether there are any circumstances or reasons that might preclude them from working with or near children.*

- Non-teaching staff, external providers and volunteers are not generally responsible for personally caring for students. Consequently, before entrusting these persons with the care of students, teaching staff must first obtain the agreement of the person to care for students (without a member of the teaching staff also being present). Teaching staff must allow non-teaching staff, external providers and volunteers an opportunity to refuse a request to personally care for students, and respect that person's decision to refuse.

#### **Guideline**

*By reason of their Job Description Form, however, some members of the non-teaching staff may be required to personally care for Students as part of their normal duties.*

- When non-teaching staff, external providers and volunteers agree to personally care for students (without a member of the teaching staff also being present), teaching staff must provide them with clear instructions as to the level of care required.

#### **Examples**

*A Year 12 coordinator is satisfied, having taken into consideration factors such as those mentioned in section 4.2.3 above, that the Aboriginal & Islander Education Officer (AIEO) is a suitably qualified and experienced person to accompany three Year 12 Aboriginal students to an open day for prospective Aboriginal students at the University of Western Australia. The Year 12 coordinator has complied with the requirements of the Excursions: Off School Site Activities policy, has briefed the AIEO about the level of care required for the three students (see section 4.1.1 above) and has agreed to be contactable via mobile telephone should the AIEO experience any problems whilst caring for the students. The AIEO feels comfortable to accept the responsibility for caring for the three students in these circumstances.*

*A Year 4 teacher is satisfied, having taken into consideration factors such as those mentioned in section 4.2.3 above, that a parent volunteer is a suitably qualified and experienced person to supervise her class whilst she leaves the classroom for a few minutes. The teacher has briefed the parent volunteer about the method of supervision and has instructed her to request assistance from the teacher in the adjoining classroom in the event of an emergency. The parent volunteer feels comfortable to accept the responsibility for supervising the class for a short period in these circumstances.*

*A LOTE teacher is satisfied, having taken into consideration factors such as those mentioned in section 4.2.3 above, that a teacher from another school is a suitably qualified and experienced person to accompany a group of language students from various schools on a cultural excursion to France. The LOTE teacher has briefed the accompanying teacher about the level of care required for his Students (see section 4.1.1 above). The LOTE teacher has also made enquiries to satisfy himself that the French families, with whom his students will be billeted, are fit and proper persons.*

#### 5.4 NON-TEACHING STAFF, VOLUNTEERS, EXTERNAL PROVIDERS

- Non-teaching staff, volunteers and external providers (and indeed, all members of the community) must take reasonable care to avoid doing or not doing things that could reasonably be contemplated as causing injury to others (including students).

##### **Examples**

*A school officer should not leave a rubbish bin in the middle of the hallway because it is reasonably foreseeable that someone could trip over it and suffer an injury.*

*A farm supervisor who sprays pesticides on the school's fruit trees should take reasonable care to ensure that the pesticide will not be harmful to the health of students.*

*A laboratory assistant should not leave dangerous chemicals lying around the science laboratory.*

- Non-teaching staff, volunteers and external providers do not have the same special duty relationship with students as do teaching staff, and unless requested and agree to do so, are not responsible for personally caring for students.

##### **Guideline**

*By reason of their Job Description Form, however, some members of the non-teaching staff may be required to personally care for students as part of their normal duties.*

- Non-teaching staff, volunteers and external providers have a right to refuse a request to personally care for students and to have their decision respected by members of the teaching staff.

##### **Guideline**

*A member of the non-teaching staff may have limited scope to refuse a request from a member of the teaching staff to personally care for students if, by reason of their Job Description Form, the request relates to a task he or she is required to perform as part of his or her normal duties.*

- If non-teaching staff, volunteers and external providers agree to perform tasks that require them to personally care for students (e.g. supervise students without a member of the teaching staff also being present), they will owe the same duty of care to those students as the duty owed by teaching staff. In other words, they will be required to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.

## APPENDIX A DUTY OF CARE - SCHOOL-BASED APPLICATIONS<sup>2</sup>

### **JOURNEY TO AND FROM PLACE AT WHICH SCHOOL ACTIVITY IS UNDERTAKEN**

As a general rule, a school has no 'door-to-door' responsibility for students. However, a duty of care will be owed in situations where the school assumes responsibility for students, such as where a school provides transport for students to and from a school activity, or where a school assumes responsibility for escorting students across a railway line or busy highway.

### **STUDENTS ON SCHOOL GROUNDS BEFORE SCHOOL**

Where it is known that students arrive at school at a certain time (e.g. if buses start delivering students from a particular time) the responsibility of the school to provide adequate supervision for the students commences at that time.

A refusal to acknowledge the presence of students will not provide a defence against liability. Refusing to open school gates or forcing students to remain on the street verge will not remove a school's responsibility.

If students frequently arrive at school well before the commencement of classes, the school should consider developing a roster system whereby teachers are requested to be on duty at a particular time before the start of the school day. This should be worked out in conjunction with the staff involved and P&C groups, all of whom will have to work together in this area. Once a suitable time has been determined for it to be viable for staff to be on the premises to supervise students, that time should be widely circulated amongst the parents of the students by way of newsletter. The advice in the newsletter should state that there will be no one to supervise children at school before the set time and that the school cannot accept responsibility for students delivered to the school prior to that time. The number of supervisors that will be required for this roster system will depend upon the age and number of students who are known to arrive prior to the commencement of the school day and upon the area to which they are directed.

Students who arrive at school early should be directed to a particular area to enable the supervisor to be able to observe exactly what is occurring. How the students should be occupied at this time is also another factor that will have to be determined by the school and the community.

Allowing for the fact that some parents will still ignore this recommendation and deliver students to school earlier than this time, these parents should be contacted individually and asked to come in to the school to discuss the matter with the principal. It should be pointed out that it is impossible for the school to provide supervision for students at these times. The parents should be requested to find some other way of occupying their children at this time.

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<sup>2</sup> Liability in negligence depends upon the application of a standard of reasonableness in all the circumstances. Each case will therefore be different, turning on its own particular set of facts. The examples provided in this document are therefore to be used as a **guide only**.

These suggestions may not remove the problem but at least if there was then an accident at the earlier time and the school was required to defend itself, it could be possible to point to the newsletters and the interviews with parents to say that the school had done all that was reasonable in the circumstances to ensure the safety of the students.

### **STUDENTS ON SCHOOL GROUNDS AFTER THE CLOSE OF SCHOOL**

Where the presence of students on school grounds is known or ought to be known, the question to be asked is whether it is reasonable in the circumstances to impose responsibility on a staff member for students using the school grounds at the close of the school day. The various scenarios a school may encounter may be summarised as follows:

#### **Students who leave school grounds and return later (e.g. in the evenings, weekends) to use the grounds**

There will be no duty of care owed to students who leave the school grounds and return later to use the grounds or playground equipment (unless they return to participate in a school activity).

#### **Students who remain on school grounds after being collected by parents**

The collection of students at the end of the school day by, for example, parents will result in those parents or others collecting the students assuming responsibility for supervising them while on the school grounds or while using the playground equipment.

#### **Students who remain on school grounds whilst waiting for a school bus or after-school care bus**

The duty of care would continue to exist if students remain on school grounds and/or play on the playground equipment while waiting for a school or after-school care bus. The responsibility for providing adequate supervision will extend at least until the last bus departs the premises.

#### **Students who remain on school grounds whilst waiting for parents to collect them**

In respect of very young students or students who are otherwise unable to care for themselves, the duty of care is likely to last until the student is collected. However, it is not reasonable to expect staff members to supervise students whose parents are regularly and significantly late in collecting their children. Schools should consider reporting concerns to the Department for Child Protection and/or delivering students into the care of the police if staff members regularly have to wait for significant times with students whose parents have neglected to collect them.

#### **Students who otherwise remain on school grounds at the close of school**

There should be a teacher on duty for a reasonable amount of time after the close of school to ensure that the majority of students are no longer present. Once a suitable time has been determined for it to no longer be viable for teachers to remain on the premises after school to supervise children, then that time should be widely circulated around the parents of the students by way of newsletter.

The advice in the newsletter should state that there will be no one to supervise students at school after the set time and that the school cannot accept responsibility for students remaining on school premises after that time. The number of supervisors who will be required for this roster system will depend upon the age and number of students who are known to remain on school premises after school and the area to which they are directed.

Students should be directed to a particular area to enable the supervisor(s) to be able to observe exactly what is occurring. The principal could also issue an order under regulation 69 of the *School Education Regulations 2000*, prohibiting students from using the grounds and equipment after school hours. Such an order would be for the purposes of managing and controlling the school and persons on the school premises, and maintaining the safety and welfare of persons on the school premises. Allowing for the fact that some parents will still ignore all of this and allow children to stay at school beyond this time, these parents should be contacted individually and asked to come in to the school to discuss the matter with the principal. It should be pointed out that it is impossible for the school to provide supervision for students at these times. The parents should be requested to find some other way of occupying their children at this time.

This may not remove the problem but at least if there was an accident after school and the school was required to defend itself it would be possible to point to the newsletters and the interviews with parents to say that the school had done all that was reasonable in the circumstances to ensure the safety of the Students.

#### **AFTER-SCHOOL SPORT ON SCHOOL GROUNDS**

A staff member who coaches a sporting team outside school hours will owe a duty to take reasonable care for the safety of the participating students if the sporting activity is an authorised school activity.

If an activity is not an authorised school activity, the staff member will be acting in a private capacity and the principle of vicarious liability (see Appendix B) will not apply. Further, the Department's public liability insurance cover will not extend to privately arranged sporting activities.

The wearing of a school uniform by members of a team comprised of students of a particular school and the naming of the team by reference to a school will not necessarily convert the sporting activity to an authorised school activity. It may, however, be the case that parents and guardians may be led to believe that the activity is being organised and conducted by the school. Where the sporting activity is not an authorised school activity, the principal should advise parents and guardians that the school assumes no responsibility for the supervision of students and for any aspect of the activity such as coaching.

#### **STUDENTS LEAVING SCHOOL GROUNDS DURING SCHOOL HOURS**

As a general rule, a school should not allow students to leave school premises during the school day in circumstances where there is no parental permission. If a student is permitted to leave in these circumstances, the school must be satisfied that no foreseeable harm will come to him or her.

A school may release a student where parental permission has been given. The form of the permission should clearly state the terms upon which parents are giving permission for the student to leave premises, including the purpose for which the permission is given, the times during which the student may absent themselves (for example daily or on a specified day each week) and the period for which the permission is given (for example a term).

The parent must also provide a written acknowledgement that the school cannot be held responsible for any injury that befalls the student away from the school premises or for any misconduct on the part of the student.

Having said this, the school must be satisfied that the parent is giving informed permission by advising the parent of any concerns it has for the student's safety. Moreover, if the school, having assessed the situation, considers that the student may be placed at risk if allowed to leave the school premises, then permission to leave should be refused notwithstanding that parental permission has been given. If, for example, the school becomes aware of unsatisfactory behaviour, risk related behaviour or other circumstances likely to affect the health, safety or welfare of the student, it will be justified in withdrawing permission, and should discuss these concerns with the student's parent or guardian.

The situation will be directly influenced by the age of the student. There is probably no reason why a school could not accede to a request by a mature post-compulsory student to leave the premises during free periods and breaks, provided written authority by the student's parent (assuming the student is under the age of 18) has been given. The situation would, of course, be somewhat different if the permission related to a 6 year old student leaving school premises to buy lunch at the local shopping centre, a situation in which the prudence of the parent could be held in question.

Provided that the school is satisfied on reasonable grounds that no foreseeable harm will come to a student, the student-teacher relationship will end and a duty of care will no longer be owed once the student leaves the premises during a free period/break or for other non-school activities, such as a doctor's appointment.

## APPENDIX B LIABILITY

### GENERAL

Liability in negligence may arise if an injured student can establish, on the balance of probabilities, that:

- a) at the time his or her injury was sustained, the person who was responsible for his or her safety owed the student a duty of care;

**Guidelines**

*Members of the teaching staff will owe a duty of care whenever a student is involved in a school activity or present for the purposes of a school activity.*

*A duty of care will be owed by a member of the non-teaching staff, volunteer or external provider whenever that person agrees to perform tasks which require him or her to personally care for students.*

- b) the person who was responsible for the student's safety breached the duty of care by failing to exercise reasonable care for the safety and welfare of the student; and

**Guideline**

*The level of care is determined by balancing factors such as those set out in section 4.1.1 above to determine whether the conduct of the person who was responsible for the student's safety on the particular occasion was reasonable in the circumstances.*

- c) as a result of the breach, the student suffered an injury which was reasonably foreseeable.

**Guidelines**

*If the injury would have been sustained regardless of whether an act was done or neglected to be done, a claim in negligence is likely to fail. It would need to be demonstrated that, but for the failure to take due care, the injury would not have occurred.*

*In general, it is necessary to identify the nature of the step which the person who was responsible for the student's safety should have taken but did not, and to establish by evidence or inference that, more probably than not, the taking of that step would have prevented or minimised the injury which was in fact suffered.*

### EMPLOYEES

- a) Injured persons may sue the State of Western Australia, which, as employer, is vicariously liable for the acts of negligence of teaching staff and non-teaching Staff committed in the course of their employment.
- b) The concept of vicarious liability does not mean that injured persons cannot sue the employee who was responsible for their safety, although this would be unlikely.
- c) The State may pay an employee's legal costs incurred in defending the action and any other liabilities incurred (e.g. damages) if the conduct of the employee was in good faith and reasonable and in the discharge of official responsibilities. There is no guarantee, however, that an indemnity will be offered; each case will be assessed on its merits.

- d) It is legally possible for the State, if its liability in negligence is established, to bring a claim for contribution or indemnity against an employee if a student was injured as a result of that employee acting outside the scope of his/her employment. Such action would occur only where there had been a deliberate act by the employee in total disregard of all instruction.

## **VOLUNTEERS**

- a) The *Volunteers (Protection from Liability) Act 2002 (WA)* provides personal liability claim protection to certain volunteers, such as parent helpers, who, in good faith, undertake community work for State agencies and departments of the public service, such as the Department of Education and Training.<sup>3</sup>
- b) Volunteers will not be protected under the legislation if they act outside the scope of the school's community work or contrary to the instructions given by the school. Protection will also not apply in respect of a volunteer whose ability to do the community work in a proper manner was, at the relevant time, significantly impaired by alcohol or drugs.
- c) In addition to the protection afforded to volunteers by the *Volunteers (Protection from Liability) Act 2002 (WA)*, the Department's public liability and personal accident insurance arrangements with RiskCover also extend to volunteers in schools.

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<sup>3</sup> The definition of "Volunteer" used in this policy differs from the definition of "volunteer" in the *Volunteers (Protection from Liability) Act 2002*. Accordingly, not all persons who fall within the definition of "Volunteer" in this policy will necessarily fall within the scope of the *Volunteers (Protection from Liability) Act 2002*. Where there is any doubt, individuals and organisations may wish to seek their own legal advice as to the application of the *Volunteers (Protection from Liability) Act 2002* to their particular circumstances.