



DUTY OF CARE POLICY

2004

“My Children, our love should not be just words and talk; it must be true love, which shows itself in action”. 1 John 3:18

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Please note:

While every effort has been made to provide accurate information in this Duty of Care Policy (2004), it should not be viewed as a document offering expert opinion about the interpretation of the law. The policy's intention is to offer some assistance in the understanding of duty of care obligations in schools.

Also, it is important to note that laws are constantly being amended and extended to account for an ever changing society. While this policy will be amended and updated periodically, schools should keep abreast of current issues and changes to the law via the Circulars, and seek advice where necessary.

The document is presented in PDF form and therefore some adjustment has been made to activate the hyperlinks contained within it. The PDF Hand Tool needs to be activated in order to use hyperlinks.

All hyperlinks are in [blue font and underlined](#) and can be accessed by Shift + clicking the web address next to the hyperlink

1. BACKGROUND

- 1.1. As a result of the increasing legal responsibilities of Schools, The Duty of Care Policy was developed to replace the former SACCS Pastoral Care and Supervision Guidelines for Schools (June 1994)
- 1.2. The 1994 Pastoral Care and Supervision Guidelines were related to Pastoral Care, Supervision and Legal Issues. Given the complexity of contemporary legal issues it was decided to focus only on that area in the new Duty of Care Policy.
- 1.3. Duty of Care was chosen as the focus of this new Policy due to the constant changing nature of Common and Statute Law. It would be beyond the scope of this Policy to cover all aspects of legal responsibilities.
- 1.4. The increasing legal responsibilities of school Principals were another reason for the Policy review.
- 1.5. There was a need for a policy that provided legal guidance and principles in an accessible form for all Principals and Catholic School staff.

2. INTRODUCTION

- 2.1. The Duty of Care Policy and Procedure 2004 is underpinned by the SACCS' Vision Statement, Charter for Teachers and Development of Personal Responsibility Policy and by existing legal principles.
Guidance by the SACCS Vision Statement would include that Catholic Schools have a duty to educate young people in all dimensions of life.
 - 2.1.1. This Duty of Care of Catholic Schools should be performed through a development of the whole person, encouragement of young people to enter a life long search for truth and to be inspired by the Gospel values.
- 2.2. Catholic schools should welcome students to a Christian learning community by inviting them to grow in responsibility and freedom.
- 2.3. Catholic Schools should prepare young people for life by giving Christian witness in the world today and making young people aware of all dimensions of creation.
- 2.4. Catholic schools have a duty to also assist young people to develop an open and critical attitude to the world today.
- 2.5. Catholic schools' policies need to be implemented in accordance with the principles of Statute Law and Common Law.

- 2.6. Duty of Care refers to the special relationship which exists between a teacher and a student. It also refers to the special relationship between a school authority and its students. A duty of care may also exist between non teaching staff and students, depending on the staff member's role.
- 2.7. Duty of Care relates to the law of negligence and, simply, it means that teachers and schools owe a duty to students to take all reasonable measures to protect their safety and welfare. If an injury results from a teacher's or a school's failure to exercise the required standard of care, a negligence claim may result.
- 2.8. This SACCS Duty of Care Policy 2004 needs to be read in conjunction with all other SACCS Policies and Guidelines that relate to Legal Responsibilities of Schools, Teachers and/or Principals.
- 2.9. If Principals and/or Catholic school staff are unclear about any area of Legal Responsibility after reading this Policy, they should contact their Principal Consultant or the Human Resources Team at the Catholic Education Office before proceeding with any course of action (see sec. 5 Useful References).

3. ELEMENTS OF DUTY OF CARE

3.1 NEGLIGENCE

The concept of negligence and the remedies which flow from the breach of a duty of care rest on establishing four key elements:

- 3.1.1. That, at the time the injury occurred, the teacher or school owed the student a duty of care.

The fact that a duty of care exists between a teacher and their students is well established in case law and is illustrated by the judgment of Justice Stephen of the High Court in [Geyer v Downs & Anor \[1977\]](http://www.austlii.edu.au/au/cases/cth/HCA/1977/64.html) <http://www.austlii.edu.au/au/cases/cth/HCA/1977/64.html> when he said:

Children stand in need of care and supervision and this their parents cannot effectively provide when their children are attending school; instead it is those then in charge of them, their teachers, who must provide it.

The school authority will be vicariously liable for any breach by its teachers of the duty of care. However, the school authority itself also owes an independent duty of care to students. This is called a non-delegable duty of care. In [The Commonwealth of Australia v Introvigne \(1982\)](http://www.austlii.edu.au/au/cases/cth/HCA/1982/40.html) <http://www.austlii.edu.au/au/cases/cth/HCA/1982/40.html>, Justice Mason stated:

the liability of a school authority in negligence for injury suffered by the pupil attending the school is not a purely vicarious liability. A school

authority owes to its pupils a duty to ensure that reasonable care is taken of them ... the duty is not discharged by merely appointing competent teaching staff and leaving it to the staff to take appropriate steps for the care of the children. It has a duty to ensure that reasonable steps are taken for the safety of the children, a duty the performance of which cannot be delegated.

In *Introvigne* <http://www.austlii.edu.au/au/cases/cth/HCA/1982/40.html> (above) Justice Murphy considered that the nature and extent of the school's authority is:

- ◆ to take all reasonable care to provide suitable and safe premises;
- ◆ to take all reasonable care to provide an adequate system to ensure that no child is exposed to any unnecessary risk of injury; and
- ◆ to take all reasonable care to see that the system is carried out.

3.1.2 That the school failed to exercise the standard of care which is expected in those circumstances.

The standard required may be a higher standard than that of a parent. Whether such a standard of a 'competent professional' (see *Rogers v Whittaker* [1992]) <http://www.austlii.edu.au/au/cases/cth/HCA/1992/58.html> is met depends heavily on the factual and individual circumstances, such as:

- ◆ The age and capacity of students
- ◆ The nature of the activity (gravity of the risk)
- ◆ Whether it is justifiable on educational grounds
- ◆ Whether it would impose unjustifiable hardship to eliminate risk
- ◆ Whether the injury was foreseeable

3.1.3 That the student suffered some actual injury.

An injury can be physical, emotional or psychological. A trivial or less significant injury may not be worth the cost of pursuing a legal remedy because in such cases, even if successful, the court is unlikely to award substantial damages. Where a student suffers more substantial injury and is successful in court proceedings, he or she will be provided with compensation usually for medical or other expenses incurred or likely to be incurred in the future. In addition, compensation for such factors as pain and suffering, loss of enjoyment of life and loss of future income may be awarded.

3.1.4 That it was the teacher or school's failure to exercise sufficient care which caused injury and the injury would probably not have occurred had the appropriate care been taken.

A school will not be responsible for all injuries befalling students. It will only be liable where a teacher or the school has failed to exercise sufficient care. For instance it was found by the Full Court of the South Australian Supreme Court in *Harvey v Pennell and the State of South Australia* (1987) that the school authority (DECS) had not failed in its duty and therefore could not be responsible for the injuries that the student suffered.

This case was a claim for damages arising out of an accident which occurred in the school yard of Playford High School, Elizabeth. The plaintiff was a 15 year old student in Year 10. She was walking through the yard at lunchtime. Another student, Pennell, was at that time playing with a broken off extendable chrome car aerial. He was flicking the aerial with some force when the narrow end broke off, travelled through the air and lodged in the head of the student, Ms Harvey, as she walked past causing severe brain damage. The Full Court found that there was no liability on the part of the State and in particular there was no breach of its duty to supervise students. The school occupied a 6.7 hectare site, had 700 students and 60 teachers and at the time of the accident 7 teachers were on duty in the playground. All teachers were present and actively supervising the area. The Court held that even if extra teachers had been on duty in the relevant area, it was unlikely that the events could have been prevented.

In contrast, in *Introvigne* <http://www.austlii.edu.au/au/cases/cth/HCA/1982/40.html> (above) the High Court found that there had been inadequate supervision. In this case the plaintiff was a 15 year old schoolboy attending Woden Valley High School in the ACT. At the time of his injury, all members of staff but one were attending an emergency staff meeting called as a result of the sudden death of the principal early that morning. One teacher only remained on playground duty. Usually there were between 5 and 20 teachers on duty to supervise approximately 900 students. Taking advantage of the lack of supervision, a group of boys including the plaintiff, began to swing on the school's flag pole. Part of the flag pole hit the plaintiff causing him serious head injuries. The court found that the supervision had been inadequate, 'it being notorious that school pupils in large numbers, if left to their own devices in a recreation area, will on occasions engage in activities including some risk of personal injury.'

3.2 VICARIOUS LIABILITY

Vicarious liability refers to an employer's liability for the negligent acts of its employees. In South Australia the Wrongs Act enshrines this in legislation.

The definition of vicarious liability favoured in the Courts is known as the "Salmond Test" (as stated in a text by Salmond and Heuston on the law of torts). This test says that employers are vicariously liable for:

- ◆ employee acts authorised by the employer; or
- ◆ unauthorised acts so connected with authorised acts that they may be regarded as modes, albeit improper modes, of doing an authorised act.

A recent High Court decision (*New South Wales v Lepore; Samin v Queensland; Rich v Queensland* [2003]) <http://www.austlii.edu.au/au/cases/cth/HCA/2003/4.html> considered the principle of vicarious liability, and assessed whether it is appropriate to extend the wrongdoing of an employee so as to require the employer to pay for the consequences of that wrongdoing.

Most of the judges of the High Court were of the view that a school authority could have been vicariously liable for assaults by a teacher if the assaults could be proved to have taken place in the context of punishment and the teacher exceeded what was reasonable in the circumstances. There was no single line of reasoning which led to the decisions of the judges. As such, it is difficult to state definitively when a school authority would be liable for the intentional wrongdoings of its teachers. It can be said though that the High Court has not extended the concept of vicarious liability to cover conduct that falls outside the scope or course of an employed teacher's duties.

It is especially important to avoid any activities with students which are not approved by the school. This particularly includes activities outside of school hours. Teachers are covered by insurance for injuries to students which happen "in the course of the teacher's employment". This means for 'school related activities'. Make sure all activities are strictly in the course of your employment to ensure cover.

3.3 NON-DELEGABLE DUTY

Schools owe its students a non-delegable duty to ensure that reasonable care is taken for ensuring their safety. This means that the school authority itself is under a direct personal obligation to ensure that reasonable care is taken, and as such cannot avoid liability by saying that it delegated that duty to someone else.

In commenting on why the special relationship between a school authority and its pupils attracts such a high standard of care, Justice Mason of the High Court said in *Introvigne* <http://www.austlii.edu.au/au/cases/cth/HCA/1982/40.html> (above):

The immaturity and inexperience of the pupils and their propensity for mischief suggest that there should be a special responsibility on a school authority to care for their safety, one that goes beyond a mere vicarious liability for the acts and omissions of its servants.

It appears from recent High Court decisions (*Lepore; Samin; Rich*) <http://www.austlii.edu.au/au/cases/cth/HCA/2003/4.html> (above) that the concept of non-delegable duty of care will not be extended to include the concept that a school authority will be responsible for *any* harm that befalls a student.

It is clear that schools have a non-delegable duty of care to its students. If a school is negligent in failing to do what a reasonable person would have done, it will be held liable. Some of the judges gave examples of when a school authority would be found liable.

In the Queensland Court of Appeal's decision in *Samin and Rich (2001)* <http://www.austlii.edu.au/au/cases/qld/QCA/2001/295.html>, Justice Williams noted that the duty of care may be breached in the following circumstances:

- ◆ negligent hiring;
- ◆ negligent training;
- ◆ negligent supervision;
- ◆ failure to terminate employment;

- ◆ failure to provide counselling;
- ◆ failure to investigate allegations; and
- ◆ failure to report abuse

Justice Gaudron of the High Court stated that a school authority must take reasonable steps to minimise, if not eliminate, the opportunity for abuse by those to whom the school has delegated its duties and functions. [Lepore; Samin; Rich](http://www.austlii.edu.au/au/cases/cth/HCA/2003/4.html) <http://www.austlii.edu.au/au/cases/cth/HCA/2003/4.html> (above)

Justice Callinan of the High Court gave some examples of non-delegable duties of the school authority:

- ◆ the engagement of reliable, carefully screened, and properly trained employees;
- ◆ the provision of suitable premises;
- ◆ an adequate system for the monitoring of employees; and
- ◆ an efficient system for the prevention and detection of sexual abuse.

[Lepore; Samin; Rich](http://www.austlii.edu.au/au/cases/cth/HCA/2003/4.html) <http://www.austlii.edu.au/au/cases/cth/HCA/2003/4.html> (above)

3.4 CONTRIBUTORY NEGLIGENCE

Courts are reluctant to attribute contributory negligence to students. If they do so decide, the amount of damages payable by the school are reduced to the extent to which the plaintiff's own carelessness contributed to the injury. The court assesses this by asking itself whether a child of that particular age and experience could reasonably be expected to behave any more carefully. For instance, in the case of *Horne v State of Queensland* (1995), a decision of the Supreme Court of Queensland, Justice Ambrose found that the plaintiff had behaved in a 'foolish and immature way' and 'failed to take the care for herself that ought normally to have been taken by a girl of her age' and accordingly reduced the liability of the State by 25%.

3.5 OCCUPIER'S LIABILITY

As a general proposition, schools are responsible for ensuring that the premises are reasonably safe for visitors to enter. Factors that the Court considers in determining liability of an injury sustained on school premises by any type of 'visitor' include:

- ◆ the gravity and likelihood of probable injury;
- ◆ The circumstances of the entry on to the premises;
- ◆ the nature of the premises;
- ◆ any knowledge which the school has or ought to have of the likelihood of persons being on that part of the premises;

- ◆ the age of the visitor;
- ◆ the ability of the visitor to appreciate any danger; and
- ◆ the burden on the school of eliminating the danger or protecting the visitor from the danger, as compared to the risk of danger to the visitor.

Schools should ensure that pathways are clear of obstacles, and ground surfaces are even in areas where visitors are reasonably likely to go.

3.6 EDUCATIONAL NEGLIGENCE

Educational negligence occurs when a student suffers harm as a result of negligent or incompetent teaching. Over time there has been an increasing focus on the legal environment in which teachers operate. The idea that teachers or school authorities should be liable for educational negligence is a burgeoning one. Prior to his appointment as a Justice of the Court, Justice Kirby noted in his address to a group of educators:

If teachers claim full membership of the club of professionals, they may have to expect the ultimate development of legal liability to meet the appropriate standard in the exercise of their professional talents ... In due course ... we will see whether the teacher's legal duty of care goes beyond protecting pupils from physical injury in the playground and science laboratory to what is perhaps the more relevant and usually more profound professional injury that can result from indifferent, ill-motivated, incompetent or just plain lazy teaching ... Such a test [may be] a powerful agent for educational change and accountability of schools and teachers to the pupils and their parents.¹

Notwithstanding the current move to reform the law of negligence, the government and community continue to demand more accountability in all forms, and the teaching profession is not immune. The Courts have long regarded teachers as professionals². As such, it is arguable that a student who suffered from incompetent teaching or advice, and sustained an injury as a result could successfully bring a civil action against that teacher or teacher's employer.³

3.7. STATUTORY REFORM

South Australia's recent public liability reforms have seen the amendment of various pieces of legislation. The enshrining of the common law principles of duty

¹ Kirby J., "Legal and Social Responsibilities of Teachers", address at the Education Centre for Whyalla and Region, South Australia, 22 March 1982, cited in Ramsay I. & Shorten A., *Education and the Law*, Butterworths, Sydney, 1996, at 296

² The High Court of Australia has referred to teaching as a profession as long as 40 years ago - see *Ex parte Professional Engineers' Association (1959) 107 CLR 208* <http://www.austlii.edu.au/au/cases/cth/HCA/1959/47.html>

³ Ramsay I. & Shorten A., *Education and the Law*, Butterworths, Sydney, 1996, at 292

of care, contributory negligence, non-delegable duty, vicarious liability and assumption of risk is an attempt to make more explicit the reasoning processes that Courts should apply in reaching conclusions about liability.

Also, these amendments to legislation both at State and Federal level have, in part, the broad aim of enabling certain recreational service providers to waive their implied contractual liability for death or personal injury. However, it is important to note that the legislation dealing with public liability applies to consumers of those services who are of full age or capacity, and that parents or guardians cannot waive their child's right to sue. Thus, it does not penalize children or others lacking legal capacity who participate in a recreation involuntarily, under the direction of a parent, guardian or school.

4. SOME COMMON EXAMPLES

4.1 SUPERVISION

4.1.1 Yard Duties

While a school is open, it has a duty to provide adequate supervision at all times. What is 'adequate' will depend on the circumstances, the size of the school, and the ability of the supervisors to access all areas where the children are playing.

Education Support Officers (in addition to teachers) may do yard duty if:

- ◆ The Principal has determined that the school assistant is suitable (i.e. an ESO who works in an office remote from students may not be suitable because students may not be accustomed to obeying that person's directives);
- ◆ Suitable training has been given, specifically with regards to Duty of Care obligations;
- ◆ The ESO has a clear understanding of the school's policies in relation to student behaviour and conduct;
- ◆ The ESO is not the only person on yard duty. There should also be a teacher, preferably also on duty, otherwise in the near vicinity to be called upon if required.
- ◆ If ESOs do perform yard duty supervision as part of their duties, this should be included in their Duty Statement.

Whenever staff are on yard duty, it is important that they are on time and actively and vigilantly patrol the required area. It is important that they do not leave the area if the next staff member fails to arrive. Schools are advised to develop a process to remedy this situation if the need arises.

4.1.2 Before and After School

If there are children who are habitually entering the playground before school commences, then the school is obliged to provide adequate supervision. So too, if there are children who are staying after school and using the facilities, there needs to be adequate supervision.

In *Geyer v Downs* <http://www.austlii.edu.au/au/cases/cth/HCA/1977/64.html> (above) a student was injured in the playground before school when she was hit in the head by a baseball bat during a game of softball. The Principal had allowed students to use the playground (under strict instructions) even though it was outside of the scheduled supervision time for the teachers. The Court held that the duty came into existence because the pupils were allowed to enter the school grounds.

It is essential that schools inform parents and students about the times when supervision will be provided. This will not protect schools absolutely from a claim outside of these times. Each case will depend on the individual circumstances.

Depending on the particular circumstances, schools may also have a legal duty to ensure the safety of its students while they are journeying to and from school and school related activities. So long as the school is able to exercise authority and control over its students, it will be incumbent upon it to take reasonable steps to protect its students against the risk of injury. Factors such as the geographical distance from the school, the nature of the activities which give rise to the risk of injury, the parties involved and the type of transport being used and the safety of the immediate surrounds are all important considerations when determining the standard of care owed.

An example of this is the NSW case *Trustees of the Roman Catholic Church of the Diocese of Bathurst v Koffman & Another (1996)* http://www.austlii.edu.au/au/cases/nsw/supreme_ct/92040753.html . In that case a 12 year old primary school student was struck in the eye with a stick while waiting to catch a school bus home from school. The bus stop was 300-400 metres from their primary school and was directly outside the grounds of the local high school. A fight broke out between the student Koffman and some high school students which resulted in the injury.

The matter went to the full Court of Appeal and in a majority decision the Court found that the primary school was partly liable (the high school was also partly liable). The primary school had given each parent a booklet alerting them to the limits of the period of supervision and specifically stated that it 'would not accept responsibility for the children's safety outside of these hours unless by special arrangement'. However, the Court said:

In my opinion, the extent and nature of the duty of the teacher to the pupil is dictated by the particular circumstances. I do not think its extent is necessarily measured or limited by the circumstances that the final bell for the day has rung and the pupil has walked out of the school gate. The circumstances of a small country high school located beside a quiet street and a primary school located on a busy highway in a big city may be contrasted. In the first case, older children leave the environs of the school in comparative safety. In the second, small children emerge from the school in a situation of immediate danger. School buses and parents may arrive late. Major streets have to be crossed and so on.

It is my view that this case does not mean that students must be supervised until they reach their homes. However, I think it is important that schools are alert to possible dangers which students may face on the journey home. It is important that schools warn students and their parents of any foreseeable dangers.

This case emphasises that there are no definitive answers to the issue of supervision. If, for instance, students are involved in after school sport or rehearsals, the school must supervise those students until they are collected (even if this is extremely inconvenient for staff when the parents are late).

Likewise, if the time for after school supervision has expired but clearly students are still in the area, staff should not just walk away leaving students unsupervised.

Schools should be aware of the main routes their students take to and from school, the drop off and pick up points, and the conduct of its students while waiting for transport. Assessing any reasonably foreseeable dangers and implementing preventative measures in these situations may include simple steps such as providing supervision at appropriate gathering spots and warning students and parents of potential dangers.

4.1.3 Classrooms and Specialist Rooms

Supervision in the classroom varies with the age of the child and the type of lesson/subject being taught. Clearly the younger the child the greater the duty of care, and clearly the more dangerous the teaching situation the more care to be taken by the teacher.

Much closer supervision is demanded in science laboratories, home economics kitchens, technical workshops and art and craft rooms. Students, especially younger secondary students, should never be left alone in these classrooms if there is an intrinsic danger in the situation, e.g. an inexperienced class using a band-saw, mixing chemicals or using boiling fat in cooking. In general, it is not prudent to leave students unsupervised in potentially dangerous situations.

For further information on science laboratories please refer to "Science Laboratory Guidelines" located online at:

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#) ► [Science Laboratory Guidelines](#)

at the following address:

<http://online.cesamet.adl.catholic.edu.au/docushare/dsweb/Get/Document-1978/ScienceLab+Guidelines.pdf>

4.1.4 Excursions

The standard of care to be exercised on excursions is arguably higher than at any other time. Frequently students are involved in inherently more risky situations and often in unfamiliar environments. The risks therefore are greater and the foreseeability of injury more likely. This is highlighted in the case of *Horne v State of Queensland* (above).

This case involved a 13 year old female student who suffered serious injuries when she fell from a bicycle she was riding from the Aspley State High School to tennis courts which were located some distance from the school and was run over by a semi-trailer. The accident occurred at the end of the school year when various sporting and recreational activities were being arranged for students during school hours. The school had communicated information regarding these activities to parents and the parent of the plaintiff student had provided consent for the daughter's participation. The parent was told by a member of the school administration that a teacher would be "in attendance". On the day in question, the teacher told the students to "make their own way" to the tennis courts and that the roll would be called at the courts. The plaintiff student borrowed a fellow student's bike and accompanied her friend who owned a bike to the courts. The bike which the student borrowed was too large for her and had a defective braking system. One of the roads along which the girls travelled was a main highway and it was on this section of their journey that the plaintiff student collided with the rear of her friend's bike causing both girls to be thrown onto the road. The friend was thrown out of the path of the overtaking semi trailer but the plaintiff student was thrown under the rear wheels of the semi trailer sustaining extremely severe injuries to both of her legs.

The court found that the State of Queensland had breached its duty of care towards the student in allowing the plaintiff to travel unsupervised from the school to the tennis courts. Justice Ambrose stated:

In my view it was incumbent upon the school authority organising the travelling of students from the high school to the tennis courts to take reasonable steps to prevent the very sort of foolish decision that the plaintiff and her friend made from being implemented ... The school authority ought to have directed that the children walked between those places under supervision of a teacher or some other person connected with the school.

4.1.5 Interstate and overseas excursions

Duty of care obligations are elevated when students are involved in interstate or overseas excursions because in these circumstances schools are responsible for students 24 hours a day in far away locations. It is essential that parents give a fully informed consent to all excursions. Extended interstate or overseas excursions require very detailed itineraries and consents.

For a detailed explanation on this topic, please refer to SACCS Guidelines "Camps Excursions and Adventurous Activities" located online at:

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#) ► [Excursions Camps and Adventure Activities Guidelines](#)

at the following address:

<http://online.cesane.adl.catholic.edu.au/docushare/dsweb/Get/Document-1972/OutdoorEd.html>

4.1.6 Excursions to venues controlled by outside organisations

Schools have a non-delegable duty to ensure the safety of its students. As such, where schools organise activities for its students to take place on premises not

owned or controlled by it, the school, in addition to the owner of the premises, may be liable for any accidents occurring on such premises. While the school may not have control over the premises themselves, it does have control over its students. The school must decide if it is safe for the students to visit the premises at all, and how many students can safely visit at one time. Accordingly, prior to any external school excursion, schools should:

- ◆ inspect the premises to ensure they are safe and suitable;
- ◆ obtain written confirmation of the qualifications and experience of those involved in organising and conducting the activity;
- ◆ enquire about the character and screening processes for recruitment of staff;
- ◆ ensure that the owner of the premises has suitable public liability insurance.⁴

It is important to remember when dealing with recreational service providers the introduction of the [Recreational Services \(Limitation of Liability\) Act 2002](http://www.austlii.edu.au/au/legis/sa/consol_act/rsola2002443/) http://www.austlii.edu.au/au/legis/sa/consol_act/rsola2002443/. This Act provides for recreational service providers to submit a Code of Practice and register their activity with the Minister of Consumer Affairs. Once registered, a consumer can enter into a contract with the provider, and agree to modify the provider's duty of care. If a consumer suffers from personal injury, the provider is only liable in damages if the consumer establishes that the provider failed to comply with the Code. However, most importantly for schools, a consumer means a person who is of full age or capacity and that any proposed system of waiver will not permit parents or guardians to waive a child's right to sue.

An example of this joint liability can be found in the British case of *Brown v Nelson (1970)*. In this case, it was found that the school successfully discharged its duty of care towards its students and they were dismissed from the suit. As part of a school organised activity, a student took part in a course at an Outward Bound Centre. While using an aerial ropeway, the wire cable snapped and the student fell to the ground. The cable was found to be rusty internally, but the defect could not have been discovered without dismantling. The warden was ordered to pay damages while the owner and the school were dismissed from the suit. Justice Niel stated that:

where a school must take their pupils to other premises, they discharge their duty of care if they know the premises and if the premises are apparently safe, and if they know that the premises are staffed by competent and careful persons. They further discharge their duty if they permit their pupils there to use equipment which is apparently safe, and is under the control of competent and careful persons who supervise the use of such equipment.

⁴ Bain, M., *School Trips and Parental Permission Forms - Minimising Liability During School Excursions*, presented at "Education Law for Schools - New Laws and Best-Practice School Management Strategies" Conference, 27-28 August 2001, Sydney

4.1.7 Out of School Hours Care

Staff employed in Out of School Hours Care also have a duty of care to those they supervise. It is crucial that they are appropriately trained and have the requisite knowledge regarding their responsibilities towards the safety and welfare of their charges. Duty of care obligations includes mandatory notification responsibilities. See sec 4.5.2. below for further explanation of child protection issues.

Further information on Out of School Hours Care can be located on line at:

[Home](#) ► [CESA Services](#) ► [Industrial and Personnel Information](#) ► [Out of School Hours Care](#)

at the following address:

<http://online.cesonet.adl.catholic.edu.au/docushare/dsweb/View/Collection-390>

4.1.8 School Boarding Houses

Boarding house supervisory staff have a duty of care towards students because of the responsibility which they have to supervise and care for students in the absence of their parents.

Persons professing special skills must use these skills to the level which could reasonably be expected of a skilled person. Generally, the standard of care required is at least the standard of a reasonable and prudent parent. More recent cases tend to suggest that the standard required may be higher than a parent.

In the recent decision of the High Court of [Lepore; Samin; Rich](#) <http://www.austlii.edu.au/au/cases/cth/HCA/2003/4.html> (above), Justice Gaudron referred to the higher duty of care that residential schools have to ensure that they:

institute a system such that its employees do not come into personal contact with a child or other vulnerable person unless supervised or accompanied by another adult.

She further added that the school authority:

should be held directly liable in negligence if abuse occurs in a situation in which there is neither supervision nor an accompanying adult.

All of the issues raised in these guidelines are relevant to boarding house staff. Because of the closer daily contact and *loco parentis* role that staff in boarding houses have, it is especially important that they are fully aware and appropriately trained in their duty of care obligations.

4.2 FIRST AID, HEALTH MANAGEMENT AND OHS&W

4.2.1 First Aid and Health Management

Teachers and various Education Support Officers have a special and primary duty to the students in their care. This duty of care requires them to refrain from doing

things that might lead to a student being injured. It also requires the staff member to take positive steps towards maintaining health and safety. An employee could be found to be negligent if assistance was not provided to an ill or injured student. The duty of care owed by education personnel is that of a 'reasonable professional' and will be governed by factors that include:

- ◆ the age of the student;
- ◆ the student's individual capabilities, including intellectual and physical impairment;
- ◆ potential dangers;
- ◆ the degree to which injury, or malaise due to illness, is predictable.

School Principal

School principals should ensure that staff, students and their families understand and follow the school's health support procedures. It is the principal's responsibility to:

- alert families to the need for health care plans if students need individual support;
- develop, monitor and review worksite health support procedures;
- manage health support planning;
- manage confidentiality.

All School Staff

A staff member's first duty is to the students in his or her care. For students with health support needs, this means the staff member:

- helps families understand health support planning procedures at the school;
- provides basic first aid;
- facilitates individual health support plans;
- develops learning and care programs which accommodate health support plans;
- offers alternative programs where participation in the planned program could place students with health issues at risk;
- supports a range of curriculum access options (for example, distance or hospital-based schooling with support from peers through the enrolling or local school);
- reports to parents and guardians any observations which could indicate health-related concerns.

All staff must take reasonable care to protect their own health and safety and that of others on campus. In providing student health support they must, therefore:

- become familiar with policies and procedures that guide work performance;

follow instructions related to health and safety;

accept responsibility for safe working conditions within their control. This includes the responsibility to notify their employer should their own health, including their infection status, pose any risk to others;

safeguard the privacy of health information, using privacy principles;

use equipment provided for health and safety purposes;

apply standard precautions against transmission of infections;

perform tasks in line with the training received.

Parents and guardians

Parents and guardians are primarily responsible for the health and well-being of their children. It is the responsibility of Parents and guardians to:

provide relevant health care information;

liaise with health professionals to provide care plans which create minimum disruption to learning programs;

assist students for whom they are responsible to self-manage, as much as is safe and practical, their health and personal care needs.

Student

Wherever possible, students should be supported to learn responsibility for their own health and personal care needs in non-emergency situations. Children in the early years will need supervision of their medication and other aspects of health care management. Older children can take responsibility for their own health care, in line with their age and stage of development and capabilities. Self-management should follow agreement by the child or student and his or her family, the school and treating health professionals.

The above information is a summary of our First Aid and Health Management Guidelines. They are a DECS' publication, reproduced with their permission. For a detailed explanation on this topic, please see SACCS Guidelines on "First Aid and Health Management" which can be located online at:

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#) ► [First Aid and Health Management](#)

at the following address:

<http://online.cesaneet.adl.catholic.edu.au/docushare/dsweb/View/Collection-689>

Also, please refer to the Catholic Church Safety Manual - First Aid Policy and Procedure located online at:

[Home](#) ► [School Communities](#) ► [Catholic Education Office](#) ► [Occupational Health, Safety and Welfare](#) ► [Occupational Health, Safety and Welfare Policy](#) ► [11 First Aid Policy and Procedure](#)

at the following address:

<http://online.cesonet.adl.catholic.edu.au/docushare/dsweb/Get/Document-1627/11.+First+Aid.pdf>

4.2.2 Occupational Health Safety And Welfare

Safety in the workplace is everyone's responsibility, but those in leadership roles have primary responsibility. The Catholic Church Safety Manual is a reference tool designed to provide schools the basis for compliance with relevant legislation and the Exempt Employer Workers Compensation Licence. It can be located on line at:

[Home](#) ► [School Communities](#) ► [Catholic Education Office](#) ► [Occupational Health, Safety and Welfare](#) ► [Occupational Health, Safety and Welfare Policy](#)

at the following address:

<http://online.cesonet.adl.catholic.edu.au/docushare/dsweb/View/Collection-572>

Following are a selection of areas that relate specifically to schools' Duty of Care.

4.2.2.1 Sun Protection and Hot Weather

All schools are required to formulate their own policy in regards to sun protection and hot weather. Such policies should be determined in consultation with the school board and parents. Parents must be informed of these policies.

In addition to wearing wide-brimmed hats, students may also be encouraged to wear sunscreen and possibly other suitable "cover-up" clothing to reduce the risk of sun damage.

Schools should also be providing adequate shade in outdoor areas, are also encouraged to minimise exposure to the sun, and reschedule outdoor activities to lower UV times of the day.

Students at many schools are also encouraged to drink water throughout the day to improve fluid intake, particularly on hot days.

Further information can be found at in the Catholic Church Safety Manual Document 12 - Version 1 "Skin Cancer Prevention Policy and Procedure", which can be located online at:

[Home](#) ► [School Communities](#) ► [Catholic Education Office](#) ► [Occupational Health, Safety and Welfare](#) ► [Occupational Health, Safety and Welfare Policy](#) Listing [12 Skin Cancer Prevention Policy and Procedure](#)

<http://online.cesonet.adl.catholic.edu.au/docushare/dsweb/Get/Document-1628/12.+Skin+Cancer.pdf>

Schools are also encouraged to become accredited with Cancer Council Australia under their *SunSmart Schools Program*. Further details can be obtained online at both Cancer Council Australia and Cancer Council South Australia's website at the following addresses:

<http://www.cancer.org.au/content.cfm?randid=160523>

4.2.2.2 Building Works

Schools undertaking refurbishment, alterations or new building works must ensure that all occupational health safety and welfare, building code and statutory requirements are met. The Catholic Education Office's Building and Planning Team are available to assist in this.

4.2.2.3 Safety in School Working Areas

All schools must ensure that all classrooms, laboratories and preparation rooms are safe for all students, staff and visitors.

Each school should formulate their own safety Policy for areas that contain hazardous substances and equipment. The policy should cover:

Storage of chemicals;

Disposal of residue and waste chemicals;

Student behaviour in risk areas;

Protective clothing and body protection;

Safety and first aid equipment;

Emergency evacuation procedures;

Risk management plan

4.2.2.4 Risk Management

Risk evaluation should be part of the continuing assessment of management responsibilities.

As part of this, and in adherence to the Catholic Church Safety Manual, in the event of an injury, incident or near miss, the Principal is responsible for initiating the following actions:

Consider the welfare of the injured person and any others affected;

Investigate the incident, injury or near miss in consultation with the Health and Safety Representative;

Complete relevant reports (and lodge any applicable claims for any employees involved) (see below 4.2.3 Accident Reports);

Identify immediate, medium and long term preventative action and implement accordingly;

Review such actions and ensure they are relevant and effective.

Please refer to the Injury/Incident/Near Miss Action Guide, located online at:

[Home](#) ▶ [School Communities](#) ▶ [Catholic Education Office](#) ▶ [Occupational Health, Safety and Welfare](#) ▶ [02 Injury/Incident/Near Miss Policy and Procedure](#)

at the following address:

<http://online.cesanel.adl.catholic.edu.au/docushare/dsweb/Get/Document-1618/2.+Incident+Reporting.pdf>

4.2.2.5 Violent Behaviour from Students

Violence can be defined as the unjustified use or threat of use of force. It also includes verbal abuse, particularly in the immediate presence of the victim.

Violent behaviour is unacceptable and can be illegal or criminal. It is covered by a range of legislation including Occupational Health Safety and Welfare, anti-discrimination, equal opportunity, workers compensation and rehabilitation, domestic and apprehended violence orders, criminal law and the common law (including duty of care).

These obligations should be foremost in the minds of schools in the development of preventative strategies.

The Courts are increasingly identifying 'hazardous people' in occupational health safety and welfare cases. These are seen as 'risks' that the employers need to manage. There is a recent case in New South Wales where a student killed a teacher in a hospitality class. The New South Wales Department of Education and Training were held to have breached their OHS&W obligations and were fined accordingly.⁵

Schools should consider and implement ways of controlling the potential for violent incidents arising from student behaviour.

Risk control strategies include assessment of students who present with behavioural problems, and dissemination of information about student's dangerous propensities to those who need to know, for their own safety and that of others. Counselling and support for both the perpetrators and those who may be affected should also be made available.

The Catholic Education Office's Behaviour Education Student Support Project ("BESS") offers support and funding for students at risk because of extreme behavioural difficulties, including students behaving in a violent manner. Schools should contact the Behaviour Education Team where support is needed in dealing with such issues.

In addition to this, the School Care Centre, located in Hindmarsh, Adelaide is a joint initiative of the Department of Education and Children's Services (DECS), SA Police (SAPOL) and WorkCover. The Catholic Education Office's Senior Education

⁵ for a comprehensive guide see *The Hands on Guide: School Principal's Legal Guide* under "Violence and Harassment and OHS Risk Management", CCH Australia

Advisor Child Protection and Leadership Formation Co-ordinator is also a member of their School Care Council Reference Group.

The School Care Centre provides all South Australian school communities with training, technical assistance and effective, up-to-date resources and tools to support school safety.

The Centre is also overseeing the implementation of the State Government's 10-point school safety plan known as "School Care". The plan includes:

1. Legislation to provide greater personal protection to the school community;
2. Establishment of a Mediation Unit;
3. Mandatory Notification Training for all teachers;
4. Improving guidelines about Duty of Care requirements;
5. Introducing a policy on volunteers and parents in schools;
6. Expansion of school watch;
7. Updating Child Protection standards, instructions, and guidelines;
8. Introduction of 'Intervention Matters' drug strategy;
9. Creation of a School Care Council;
10. Connecting the School Care Centre with the Crisis Response Team.

South Australian Catholic schools are eligible to access all of these programs.

Further information can be found online at:

<http://www.schoolcare.sa.edu.au/schoolcare>

Their contact phone number is: 08 8463 5977

4.2.2.6 Accident Reports⁶

Principals must ensure that reports are prepared for all but very minor accidents that occur on school premises or during a school organised activity. Reports should, as far as possible, be collated by a senior member of staff who was not involved in the accident. Reports should be kept for a minimum of 7 years, or until the injured person attains 25 years of age whichever is the longer. (see below 4.6.3 Student Records)

All relevant documentation should be included. Depending on the scenario, this could include any or all of the following:

⁶ see *Schools Alert*, CCH newsletter, Issue 7, 21 November 2003, at <http://www.cch.com.au/>

Witness statement, including the person injured, if practicable (where this is necessary, be aware that Privacy legislation is applicable, and ensure that witnesses are aware that such statements may be used to defend any possible legal proceedings or any assessment of claims);

Details of supervision arrangements in place at the time;

Staff supervision rosters;

Photographs of the scene;

Sketch plans of the site marking the locations of the accident and position of relevant people;

Details of any previous accidents of a similar nature.

4.2.2.7 Notifying Parents/Guardians

Parents/Guardians must be informed of any accident involving their children as soon as possible after the accident occurs. The following information should be conveyed:

Confirmation that their child was involved in an accident, together with a description of the nature of the accident; and

Details of the injuries sustained; and

Details of any follow up action - e.g. first aid, ambulance.

Copies of any correspondence should be kept on the student file. If they are initially contacted by phone, a memo of the conversation should be taken down.

Liability for the accident or any opinion as to the legal responsibility for the accident should not be expressed.

Principals should be as helpful as is reasonably possible in providing information to students, parents and guardians, however any request for a copy of the accident report and accompanying documentation should be refused until the Principal has received legal advice through their Principal Consultant. However, a person who has made a statement is entitled to have a copy of that statement upon request.

4.3 STUDENT MOTOR VEHICLES

Schools must take steps to avoid reasonably foreseeable risks of injury to all persons on school premises.

If a school breaches its duty of care, by either acting in a way that puts persons at risk or failing to prevent a hazard or failing to adequately supervise, then it may be liable for damages.

The law also imposes a duty of care on drivers of vehicles to take care of the safety of passengers and other road users and pedestrians.

While schools cannot prevent students from driving to school, they do have a duty to ensure that parental consent is obtained from all relevant parents for student drivers transporting other minors. As a general rule, principals should not allow students to transport other students in private vehicles in connection with any school activity.

In certain situations the duty will extend to cover students travelling to and/or from home to school or school organised activities. For example, if students are required to make their own way to a school excursion, it is the school's responsibility to ensure that arrangements are made to protect students from foreseeable risks (see sec. 4.1.above)

Schools should have well defined policies regarding students driving themselves and other students to and from school, excursions and the like.

Following is a list of **essential criteria** that all policies should address:

Drivers are expected to obtain written permission by the Principal and parents prior to driving to school;

Students should be discouraged from using their own vehicle going to and from school organised activities during school hours. Schools should provide adequate transport for all parties concerned;

Where private vehicles are used to transport students to school organised activities, specific written consent should be given by all relevant parents, including parents of student drivers and passengers;

Student drivers' licences should be checked for authenticity and sighted by Principals or delegates;

Students with Learner's Permits should not be allowed to transport other students under any circumstances;

Registration number and make of vehicle being driven should be provided;

Vehicles should be parked in designated parking areas only (note that the school is not under an obligation to provide for parking space on school grounds);

Students should be prohibited from accessing vehicles during school hours, irrespective of where the vehicle is parked, unless specific prior approval has been given;

Students should not use their cars as a place for recreation or leisure;

Leave Passes must be obtained before leaving school grounds in student vehicles;

Parents should be advised that the school takes no responsibility for damage to any vehicles left on school premises and drivers park on school premises at their own risk;

Fostering Of Personal Responsibility

The owner/driver is responsible for ensuring they carry the relevant driver's licence, that the vehicle is appropriately registered and insured, and roadworthy, and that the number of passengers does not exceed the number of seatbelts;

Any claims arising out of accident or injury would be dependant upon the owner of the vehicle having the appropriate insurance and on the application of common law principles; The person in charge of the vehicle must ensure that all those travelling in the vehicle are using the appropriate restraining device;

Any child under 8 should be restrained in the rear seating position first. A front seat should only be used by a child when all of the rear seating positions are used by other children. In these circumstances, the largest child should be seated in the front;

Drivers should observe applicable speed limits on and around school grounds;

Consideration should be given at all times to neighbouring residents of the school, and students are expected to act responsibly at all times, adhering to all road traffic rules;

Breaches/Consequences

Parents should be encouraged to support the school in enforcing its policy;

Standard internal disciplinary procedures should be invoked if breaches of the driving policy occur;

Further information and Proformas for consent forms can be located online at:

[Home](#) ► [CESA Services](#) ► [Forms and Proformas](#) ► [Student](#)

at the following address:

<http://online.cesonet.adl.catholic.edu.au/docushare/dsweb/View/Collection-384>

and

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#) ► [Excursions Camps and Adventure Activities Guidelines](#) - (soon to be updated);

at the following address:

<http://online.cesonet.adl.catholic.edu.au/docushare/dsweb/Get/Document-1972/OutdoorEd.html>

4.4 PHYSICAL EDUCATION AND SPORT

Teachers and schools can be held liable for injuries caused by sporting activities. A leading High Court case in this area is [Rootes v Shelton \(1967\)](#) <http://www.austlii.edu.au/au/cases/cth/HCA/1967/39.html> . In that case Justice Kitto said:

I cannot think that there is anything new or mysterious about the application of the law of negligence to a sport or game. The court must consider whether in a situation in which the plaintiff's injuries were caused, the defendant owed him (sic) a duty to take care not to harm him, what the extent of the duty was ... and what causal relationship the plaintiff must prove between an act or omission of the defendant ... and the plaintiff's injury.

4.4.1 Negligence of the school authority

There exist a number of ways that liability for negligence on the part of the school authority could arise in the school sporting context. For instance, in the case of *Watson v Haines* (1987) Justice Allen of the NSW Supreme Court found that the school authority was negligent even in the absence of negligence by any of its teachers. In that case the plaintiff was a teenage boy who was rendered a quadriplegic as a result of injuries suffered in a rugby scrum during a first grade match against another school. The plaintiff had a long thin neck and evidence was provided that the Education Department of NSW had been specifically warned that young men with long thin necks were predisposed to the particular injury suffered by the plaintiff and that such young men should not be played in the position of hooker. Despite being provided with the resources to inform all schools about this warning, the Education Department did not comply with the Minister's direction to inform all schools. Instead they distributed a number of kits in resource centres for borrowing by schools. No attempt was made to advertise the availability of the kits and in fact none had ever been borrowed.

Both of the teachers involved in rugby coaching at the school were absolved from all responsibility as, at the time of the injury, they had no reason to believe the boy was at risk. In fact they only became aware of the risks as evidence unfolded at the trial.

Therefore, despite the absence of negligence on the part of the teachers, the Education Department had failed to discharge its non-delegable duty of care to the student. The court found that it had failed to implement an adequate system to ensure that no pupil was exposed to unnecessary risk of injury and was therefore liable.

4.4.2 Condition of School Grounds

Further, a school may be liable if an injury is sustained as a result of the condition of the school grounds upon which a sport is played. In *Nowak v Waverley Municipal Council & Ors* (1984), it was held that the owner of the sports field had failed to ensure that a football field was as fit and safe as far as reasonably possible. In that case, water sprinklers in the field posed a significant risk to players.

It could also be the case that very hard and dry sports fields could result in the school being liable for knee injuries to students. A school should ensure that its fields and equipment pose no danger to its students. It also has a duty to ensure that other sporting grounds at which its students play are safe. A failure to intervene if it is aware that its students are playing on sub-standard surfaces could result in a claim of negligence against the school. Likewise, a school owes a duty to students from other schools who use its school's facilities.

4.4.3 Negligence of Teachers/Sports Coaches

Of course, a school may be liable because of the negligence of one of its teachers or sports coaches. For instance, if a teacher is aware that a particular student is prone to violent and aggressive behaviour, it may be negligent not to protect other students from that student. It may be negligent not to remove the student from the game at the first sign of aggression.

Schools should also ensure that they are familiar with and strictly comply with any guidelines provided in relation to teacher/student ratios for various sporting activities.

These are detailed in SACCS' Guidelines "Camps Excursions and Adventurous Activities" located on line at:

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#) ► [Excursions Camps and Adventure Activities Guidelines](#)

at the following address:

<http://online.cesanel.adl.catholic.edu.au/docushare/dsweb/Get/Document-1972/OutdoorEd.html>

A court will make up its own mind about the adequacy of the recommended ratios but it is most unlikely to find, in the event of injury, that recommended ratios were too generous. For example, in the case of *Nicholas v Osborne & Ors* (Unreported, Victoria County Court, Nov 1985) a student died after falling and striking his head during an arduous bush walk. The judge found the teacher/student ratio to be inadequate in the circumstances despite the fact that it was better than the ratio recommended by the Education Department.

4.4.4 Indirect Sporting Injuries

This area of liability seems destined to increase markedly in the future. Sports medical experts are increasingly issuing warnings about the dangers of indirect injuries to students and, in particular, overuse injuries. Overuse injury is damage to the body due to prolonged or very repetitive exercise. Such injuries are predominantly attributable to poor coaching methods. Students, because of their age and the stresses on the body of rapid growth are particularly prone to overuse injuries. Overuse injuries are capable of causing significant long term and permanent injury to students. Students with particular sporting talent often also exhibit significant psychological injury from the long term effects of overuse injuries. Many of these injuries do not become fully apparent until the child reaches adulthood. It is imperative that schools ensure that up to date training is available and attended by all of their sports coaches to protect students from injuries of this type.

For a more detailed discussion please see the Guideline "Physical Education and Sport" located on online at:

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#) ► [Physical Education and Sport](#)

at the following address:

<http://online.cesanel.adl.catholic.edu.au/docushare/dsweb/Get/Document-1977/PE+and+Sport.html>

4.5 SAFETY AND WELFARE

4.5.1 Playground Safety

There are a number of Australian Standards which apply to school playgrounds. The Catholic Education Office's Planning Team has copies of them and all schools are able to contact the Planning Team for advice.

There is also a checklist for Playground Safety and other information available on line at:

[Home](#) ➤ [CESA Services](#) ➤ [Building and Planning](#) ➤ [Maintenance of Schools](#)

At the following address:

<http://online.cesanel.adl.catholic.edu.au/docushare/dsweb/View/Collection-910>

There are some Fact Sheets available on-line, which are endorsed by Kidsafe South Australia.

They are published by Kidsafe WA and Kidsafe New South Wales. Both of their web sites provide some very useful information directly relevant to schools on how to adhere to the Australian Standards.

The New South Wales Playground Advisory Committee also provides a number of resources regarding playground safety and design.

They are located at the following addresses:

<http://www.kidsafewa.com.au/factsheets/Playground%20Safety.pdf>

<http://www.kidsafensw.org/playsafety/index.htm>

4.5.2 Food Safety

Schools have a duty of care to produce safe food, and an obligation to comply with the Food Safety Standards. School canteens, before/after school care programs, vacation programs, boarding houses, fundraising events and fetes where food is provided are all affected by the Food Safety Standards.

The Food Safety Standards can be located on line at the Department of Human Services, Public Health South Australia web site at the following address:

<http://www.dhs.sa.gov.au/pehs/food-index.htm>

4.5.3 Sexual Harassment and Bullying

Sexual harassment is a form of sex discrimination. A person who is being harassed may suffer psychological, mental or physical disorders. This is particularly the case with younger people.

Bullying has both long term and short term effects on victims. The long term may range from mental and psychological damage to personal loss and loss of employment opportunities.

Sexual harassment and bullying, in addition to constituting possible offences under the criminal law can also possibly give rise to a civil claim for damages.

As canvassed in sec 3 “Elements of Duty of Care” above, a school authority can be found liable for damage caused to its students due to harassment, violence and bullying through its own negligence or that of its employees or by breaching its non-delegable duty of care owed to its students.

In the American case of *D R v Middle Bucks Area Vocational Technical School*, 972 F 2D 1364 (#rd Cir 1992), a student sued her school for failure to protect her against sexual harassment and assault perpetrated by other students in the classroom. It was alleged that the teacher had difficulty in controlling the class, frequently left it unsupervised, and had reason to suspect that harassment was taking place. Also a school assistant director knew of the assaults and failed to remedy the problem, which allegedly amounted to liability for failure to protect the bodily integrity of the students.

Australian Courts have recognised schools’ liability where negligent supervision gives rise to an emotional or physical injury due to criminal behaviour of students in the classroom. Whether liability is imposed will depend not only on how the injury or harm was inflicted, but also how foreseeable it was, how grave the injury was, and whether the educational authority has taken reasonable steps to prevent the harm. For example, in 2001 a former student of a school in Victoria was awarded \$60,000 in damages for the years of abuse he suffered at the hands of bullies in the school he attended. There was no dispute as to the existence of bullying in the school. The point at issue was whether the school had taken reasonable steps in response to the situation to protect the safety and welfare of its students. The Court held that, notwithstanding that the bullying had come to the attention of the school authority, no appropriate action was taken. It was found that the student suffered physical and psychological injuries and was awarded damages accordingly.

For further, detailed discussion on these issues, please refer to the individual SACCS Guidelines, which are located at:

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#)

at the following address:

<http://online.cesamet.adl.catholic.edu.au/docushare/dsweb/View/Collection-360>

Under the following headings:

[Responding to Bullying in the Workplace Procedures - SACCS Guideline](#)

[Responding to Discrimination Procedures - SACCS Guidelines](#)

[Sexual Harassment](#)

4.5.4 Child Protection / Mandatory Notification

SACCS’ Child Protection Policy directs schools to develop and implement relevant practices, procedures and programs for all students to ensure that their school is a place where children can be safe and feel safe.

Catholic Schools have an obligation to

protect children

provide a secure, safe environment where children can be safe and feel safe

intervene on behalf of children

actively work towards empowering children

ensure the principles of care, protection and safety are implemented.

School staff are to be educated in the area of child protection and mandatory notification.

Schools are to provide protection and abuse prevention curriculum for students.

SACCS' Child Protection Policy is located online at:

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#) ► [Child Protection - SACCS Policy](#)

at the following address:

<http://online.cesaneet.adl.catholic.edu.au/docushare/dsweb/Get/Document-1924/chiprot.pdf>

SACCS' procedural guidelines for dealing with child abuse are located online at:

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#) ► [Child Abuse Procedure SACCS](#)

at the following address:

<http://online.cesaneet.adl.catholic.edu.au/docushare/dsweb/Get/Document-1969/CHILD+ABUSE.pdf>

4.5.5 Disclosures made in Confidence

If a student discloses to a staff member something that puts their or someone else's safety or welfare at risk, for example that they are suicidal, or that they are planning to run away from home, then the staff member's overriding duty of care towards that student demands that they immediately inform the Principal or delegate who should then contact the relevant parents/guardians about their concerns.

Ideally, this should be done with the consent of the student, if at all possible, so that positive relationships can be maintained.

These situations often arise in a counselling session. Notwithstanding the counsellor's obligations about confidentiality, their duty of care towards the student may demand that the confidence be broken.

The Counselling Association of South Australia Inc (CASA)'s Code of Ethics states:

... *Unless required by law*, (italics inserted) counsellors must maintain the confidentiality of the counselling relationship.

... Exceptional circumstances may arise which give the counsellor good grounds for believing that the client will cause serious physical harm to others or themselves. In such circumstances, the breaking of confidentiality may be required, preferably with the client's permission, or after consultation with a supervisor.

The Code of Ethics can be found on [CASA's website](http://www.casa.asn.au/word/code_of_ethics_2002.doc) at the following address:

http://www.casa.asn.au/word/code_of_ethics_2002.doc

No staff member should attempt to provide counselling to the student unless they have the requisite level of counselling skills in that particular area.

4.5.6 Dangerous Risk Taking Behaviour observed out of the school environment

If a staff member observes a student partaking in dangerous risk taking behaviour out of the school environment then, in certain circumstances, there may be an obligation to report that to the Principal who should then contact the relevant parents/guardians. Each situation will be different and a judgment call will need to be made.

It is for this reason that staff should maintain their professional boundaries at all times when dealing with students - and accordingly schools strongly discourage staff from attending any student parties and the like. If a member of staff has contact with a student outside of the school environment, and can be reasonably seen to be acting in his/her capacity as a staff member by that student, then the duty of care towards that student may be activated.

4.6 SCHOOL RECORDS

It is each school's responsibility to ensure that records relating to all aspects of school administration, students and staff are kept secure, accurate and up to date.

Their use must be protected from loss and unauthorised use. As such, there should be comprehensive confidentiality and security arrangements particularly for those files containing sensitive and personal information. For electronic files that contain personal information, access should be restricted by password and other appropriate measures. Back ups of all electronic records should be done regularly. Some documentation will need to be kept as a hard copy, such as documentation that requires a signature.

4.6.1 Financial Business Records

Must be kept for a minimum of 7 years;

If space permits, it is advisable to keep for a longer period;

Historically significant documents should be archived;

Any sensitive or contentious documentation which could possibly be subject to legal proceedings should be kept indefinitely.

4.6.2 Staff Records

Keep for at least 7 years after staff member leaves school;

When transferring employment history details to other Catholic schools, only send copies, and keep all originals;

Any documentation which could possibly be subject to legal proceedings should be kept indefinitely in a confidential file;

Staff should have access to their file:

in accordance with Privacy Guidelines;

with someone else present at all time;

no material to be removed from file;

reasonable photocopying should be allowed;

some documentation should not be stored in the personnel files such as letters by or addressed to the Principal and 3rd parties.

4.6.3 Student Records

Documentation to be kept till student is 25 years old;

The following records should be retained:

Application for Enrolment Form and Acceptance Form;

Admission Register;

Roll Books;

Student Records including marks, grades and comments. For 'continuous assessment' subjects, enough examples will be needed to demonstrate achievement and progress (with corresponding documentation);

Accident or Injury Reports;

Records of suspensions and other serious disciplinary records;

Any guidance test results, Consultant or Psychologist reports;

Any correspondence relating to the above.

Further information relating to the retention of school records can be located online at:

[Home](#) ► [CESA Services](#) ► [Industrial and Personnel Information](#) ► [Record Keeping](#)

at the following address:

<http://online.cesamet.adl.catholic.edu.au/docushare/dsweb/View/Collection-515>

SACCS' policy on Privacy should be read in conjunction with this section. It is located online at:

[Home](#) ► [CESA Services](#) ► [Industrial and Personnel Information](#) ► [Privacy](#)

at the following address:

<http://online.cesanel.adl.catholic.edu.au/docushare/dsweb/View/Collection-517>

4.7 INTERNET USE

Individuals and/or the School may be liable for what is written or said in an email message. Email is neither private nor secret. It may be easily copied, forwarded, saved, intercepted, archived and may be subject to discovery in litigation. The audience of an inappropriate comment in an email may be unexpected and extremely widespread.

The Internet, email or messaging should never be used for the following purposes:

to abuse, vilify, defame, harass, degrade or discriminate (on the grounds of, for example, sex, race, or disability et cetera);

to send, assent to receive or store obscene, offensive or pornographic material;

to discuss or comment on the physical appearance of other persons (whether they receive the message or not);

to harass any person whether through language, frequency or size of messages;

to injure the reputation of the School and or the Church in a manner that may cause embarrassment to the employer or the Church;

to offend the ethos and values of Catholic teachings;

to spam, spoof or mass mail or to send chain mail;

to infringe the copyright or other intellectual property rights of another person;

to perform any other unlawful or inappropriate act.

For further information relating to appropriate use of the Internet can be located online at:

[Home](#) ► [CESA Services](#) ► [Policies, Procedures & Guidelines](#) ► [Communications & Technology Policy - SACCS Policy](#)

at the following address:

<http://online.cesanel.adl.catholic.edu.au/docushare/dsweb/Get/Document-1367/CommTechPolicy.pdf>

5. USEFUL REFERENCES

All hyperlinks are in [blue font and underlined](#). Shift + click the accompanying address to follow link.

5.1 LOOSE-LEAF SERVICES

“The Hands On Guide: School Principals Legal Guide” CCH Australia Ltd., (also available as an on-line subscription) (recommended - contact Human Resource Services Team for subscription information)

5.2 ON-LINE INFORMATION

5.2.1 CESA Online (recommended)

at the following address:

<http://online.cesanel.adl.catholic.edu.au/docushare/dsweb//HomePage>

[Home](#)

- ▶ [CESA Services](#)
- ▶ [Child Protection & Mandatory Reporting](#)
- ▶ [OHS&W](#)
- ▶ [Industrial and Personnel Information](#)
 - ▶ [Out of School Hours Care](#)
 - ▶ [Overseas & Interstate Excursions](#)
 - ▶ [Privacy](#)
 - ▶ [Record Keeping](#)
- ▶ [Screening Procedures](#)
- ▶ [Policies, Procedures & Guidelines](#)
 - ▶ [Charter for Teachers - SACCS Charter](#)
 - ▶ [Child Abuse Procedure SACCS](#)
 - ▶ [Child Protection & Mandatory Reporting](#)
 - ▶ [Communications & Technology Policy - SACCS Policy](#)
 - ▶ [Development of Personal Responsibility - SACCS Policy](#)
 - ▶ [Excursions Camps and Adventure Activities Guidelines](#)
 - ▶ [First Aid and Health Management](#)
 - ▶ [Forms and Proformas for Students](#)
 - ▶ [Interview of Students](#)

- ▶ [Out of School Hours Care](#)
- ▶ [Overseas & Interstate Excursions](#)
- ▶ [Physical Education and Sport](#)
- ▶ [Procedures for Taking Students on Overseas & Interstate Excursions](#)
- ▶ [Responding to Bullying in the Workplace Procedures - SACCS Guideline](#)
- ▶ [Responding to Discrimination Procedures - SACCS Guidelines](#)
- ▶ [Science Laboratory Guidelines](#)
- ▶ [Screening Procedures](#)
- ▶ [Sexual Harassment](#)
- ▶ [Record Keeping](#)
- ▶ [Suspension & Expulsion - SACCS Guidelines](#)
- ▶ [Using the Internet Legally \(guidelines\)](#)

5.2.2 Websites

Australasian Legal Information Institute (AustLII)
<http://www.austlii.edu.au/>

Cancer Council Australia, SunSmart Schools Programs
<http://www.cancer.org.au/content.cfm?randid=160523>

and

<http://www.cancersa.org.au/i-cms?page=1.6.35.460>

Department of Human Services, Public Health South Australia, Food Safety
<http://www.dhs.sa.gov.au/pehs/food-index.htm>

Kidsafe SA
http://www.greenweb.com.au/kidsafe/html/sa_information.html

Kidsafe NSW
<http://www.kidsafensw.org/playsafety/index.htm>

Kidsafe WA
<http://www.kidsafensw.org/playsafety/index.htm>

Legal Services Commission, Law Handbook On line (recommended)
<http://www.lawhandbook.sa.gov.au>

Review of the law of Negligence, "The Ipp Report"
<http://www.treasury.sa.gov.au/ipp.html>

The Counselling Association of South Australia Inc (CASA) - Code of Ethics
http://www.casa.asn.au/word/code_of_ethics_2002.doc

WebLaw (recommended)
<http://weblaw.edu.au/weblaw/index.phtml>

5.3 CATHOLIC RESOURCE AND INFORMATION SERVICE

112 Kintore Street Thebarton SA 5031

Ph: 8301 6869
Fax: 8301 6870
Email: cris@ceo.adl.catholic.edu.au

Catholic Church Insurance Limited Ed., *Duty of Care: Teachers and Liability in Schools*. A video presentation from Catholic Church Insurance Limited., Roger & Clarke, Melbourne, 1989

Edwards J., Knott A., Riley D., *Australian Schools and the Law*, LBC Information Services, Sydney, 1997

Ramway I. & Shorten A., *Education and the Law*, Butterworths, Sydney, 1996

Sungaila Dr. H., *Litigation in Education*, Gavemer Publishing, Sydney, 1988

Also look in CRIS' Behaviour Management Collection for a variety of resources.

5.4 CATHOLIC EDUCATION OFFICE

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6. RELEVANT CASE LAW

All hyperlinks are in [blue font and underlined](#). SHIFT + click to follow link.

- ◆ Brown v Nelson (1970) 69 LGR 20
- ◆ [The Commonwealth of Australia v Introvigne \(1982\) 150 CLR 258](#)
<http://www.austlii.edu.au/au/cases/cth/HCA/1982/40.html>
D R v Middle Bucks Area Vocational Technical School, 972 F 2D 1364 (#rd Cir 1992)
- ◆ [Geyer v Downs & Anor \[1977\] HCA 64](#)
<http://www.austlii.edu.au/au/cases/cth/HCA/1977/64.html>
- ◆ Harvey v Pennell and the State of South Australia (1987) 46 SASR 158
- ◆ Horne v State of Queensland (1995) ATR 81-343
- ◆ New South Wales v Lepore; Samin v Queensland; Rich v Queensland [2003] HCA 4
<http://www.austlii.edu.au/au/cases/cth/HCA/2003/4.html>
- ◆ Nicholas v Osborne & Ors (Unreported, Victoria County Court, Nov 1985)
- ◆ Nowak v Waverley Municipal Council & Ors (1984) ATR 80-200
- ◆ [Rich v State of Queensland; Samin v State of Queensland \(2001\) Aust Torts Reports ¶81-626.](#)
<http://www.austlii.edu.au/au/cases/qld/QCA/2001/295.html>
- ◆ [Rogers v Whittaker \[1992\] HCA 58](#)
<http://www.austlii.edu.au/au/cases/cth/HCA/1992/58.html>
- ◆ [Rootes v Shelton \(1967\) 116 CLR 383](#)
<http://www.austlii.edu.au/au/cases/cth/HCA/1967/39.html>
- ◆ [Trustees of the Roman Catholic Church of the Diocese of Bathurst v Koffman & Another \(1996\) ATR 81-399](#)
http://www.austlii.edu.au/au/cases/nsw/supreme_ct/92040753.html
- ◆ Watson v Haines (1987) ATR 80-094

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