



# Duty of Care

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‘Duty of care’ is a legal concept that was developed by the courts through their decisions. It refers to an obligation to take reasonable care to protect another from all reasonably foreseeable risk of harm.

According to common law, a duty of care will be found to exist between two parties where two criteria are met:

- it is reasonably foreseeable that the actions or omissions of one party may cause harm to another; and
- there is something about the nature of the relationship between the parties that justifies the imposition of a duty of care.

The question of what constitutes ‘reasonable care’ in any given case is ultimately a question of law to be determined by a court and will depend on the individual circumstances of each case.

The standard of care is the degree of foresight and caution required of educators who owe a duty of care to the children in their care and control. The requirements of the standard will depend on the circumstances of the activities to be undertaken by those children.

When educators consider the risk of harm to the children in their care and control, they will also need to consider factors such as age, experience and care needs. The greater the risk of harm, and the more serious the possible harm, the higher the standard of care owed.

## HOW DUTY OF CARE APPLIES TO EDUCATORS

Educators owe a duty to take reasonable care to protect those children in their care and control from a reasonably foreseeable risk of harm. If harm results from a failure to exercise the required standard of care, a negligence claim may result.

The standard of care required of an individual is that of a reasonable person in the individual's position who was in possession of all information that the individual either had, or ought reasonably to have had, at the time of the incident. Educators and other staff working with children must take reasonable steps to minimise the risk of reasonably foreseeable harm, including by:

- providing suitable and safe premises
- providing an adequate system of supervision
- undertaking risk assessments for service activities and events

- implementing strategies to prevent reasonably foreseeable injuries, whether physical or psychological, to children
- ensuring that appropriate medical assistance is provided to sick or injured children
- ensuring the service complies with Child Protection legislation
- managing employee recruitment, conduct and performance
- implementing relevant service policies, e.g. Children's Health and Safety, Supervision, Child Protection, Food Safety, Hand washing, Cleaning etc.

It is generally accepted that individuals who comply with an established standard of practice, by exercising good judgement and common sense in dealings with those children and young people to whom this duty is owed will suitably fulfil their duty of care obligation. The standard of care required can vary depending on an individual's position with respect to their level of control and direction over those persons in their care or with whom they are engaged.

### Sources:

*Duty of care policy.* Department for Education, SA.

[https://www.education.sa.gov.au/sites/default/files/duty-of-care-policy.pdf?acsf\\_files\\_redirect](https://www.education.sa.gov.au/sites/default/files/duty-of-care-policy.pdf?acsf_files_redirect)

*Duty of Care.* Education Victoria

<https://www2.education.vic.gov.au/pal/duty-of-care/policy>