



# DUTY OF CARE

## 1 INTRODUCTION

Minaret College (**'College'**) has a duty to take reasonable measures to take care of Students and other persons whilst they are involved in College activities, or are otherwise in the College environment, which in this policy means and specifically includes:

- a) a campus of the College;
- b) online and virtual College environments made available or authorised by the College for use by students (including email, intranet systems, software applications, collaboration tools, and online services); and
- c) other locations provided by the College or a third-party for a student to use, including locations used for:
  - i. camps;
  - ii. approved homestay accommodation;
  - iii. delivery of education and training (by RTOs, TAFEs, non-school senior secondary providers or another school); or
  - iv. sporting events, excursions, competitions or other events.

The College has a responsibility to provide:

- a) a safe College environment; and
- b) adequate supervision of all Students in all College environments.

The College acknowledges that this duty is non-delegable, meaning that it cannot be assigned to another party.

## 2 PURPOSE

The purpose of this Policy is to promote the care, safety and welfare of Students by ensuring the College takes all steps necessary to:

- a) protect Students from reasonably foreseeable risks of injury; and
- b) pay particular attention to vulnerable students, including younger students or students with Disabilities.

This Duty of Care Policy is one of the College's statements that details the strategies and actions the College takes to implement clause 9 of the Ministerial Order 1359 (Diversity and equity).

## 3 SCOPE

This Policy applies to all College Staff, including employees, volunteers and external providers that are onsite or otherwise engaged in work authorised by the College or otherwise in the College environment.

## 4 STANDARD OF CARE

### 4.1 TEACHING STAFF

The standard of care required of teaching staff is that of a 'reasonable' teacher. This means that the standard of care owed is the standard one would expect from a hypothetical teacher with teaching skills and attributes exercising their professional judgement. It is not a duty to ensure no harm will ever occur, but a duty to provide reasonable care to avoid harm being suffered.

The teacher-student relationship forms the basis of a teacher's duty of care. The scope of this relationship depends on the particular circumstances, and may extend outside school hours if the College has assumed responsibility for the Student (e.g., on camps).

Examples of when a teacher has failed to meet their duty of care include:

- a) arriving late to class, leaving class early or leaving students unattended in the classroom;
- b) arriving late to scheduled or timetabled yard duty;
- c) failing to act appropriately to protect a student who claims to be bullied;
- d) believing a child is being abused but failing to report the matter appropriately; and
- e) ignoring dangerous play.

The above examples may also constitute a breach of other legal obligations, for example scenario (d) could also constitute a breach of College policy, a breach of mandatory reporting obligations, a breach of the *Crimes Act 1958* offence of failure to disclose and a breach of the requirements of the reportable conduct scheme.

### 4.2 NON-TEACHING STAFF, VOLUNTEERS & EXTERNAL PROVIDERS

Non-teaching staff, volunteers (including parent volunteers) and external providers (onsite) also owe a duty of care to protect Students from risks of harm that ought reasonably to be foreseen. This duty only exists when the duty is consciously passed from a teacher to a non-teaching staff member, volunteer or provider, and accepted by that individual.

A common example is where a teacher asks a non-teaching staff member to accompany a Student to a different area of the College.

## 5 DUTY OF CARE POLICY PRINCIPLES

The College owes all Students a duty of care to:

- a) take reasonable measures to protect them from reasonably foreseeable risks of injury;

- b) take reasonable care that any Student on the premises will not be injured or damaged because of the state of the premises, including things done or omitted to be done to the premises; and
- c) take reasonable precautions to prevent the abuse of a child by an individual associated with the College while the child is under the care, supervision or authority of the College.

The College acknowledges that different and sometimes greater measures may need to be taken for younger Students or Students who are vulnerable or have disabilities to discharge this duty of care as they require more care and may be exposed to higher levels of risk.

The College fosters an inclusive culture where equity is upheld and diverse needs are respected in policy and practice. The College pays particular attention to the needs of vulnerable students.

The College will ensure that particular management and safety plans are in place for each respective Student with a Disability. For details regarding reasonable adjustments for Students with a Disability, see the Diversity and Inclusion Policy.

The College seeks to discharge this duty of care to diverse students partly via the implementation of the Diversity and Inclusion Policy which lists ways in which the College pays particular attention to the needs of diverse students. When determining reasonable measures to discharge the duty of care, the College considers individual circumstances such as:

- a) the Student's age, experience and capabilities;
- b) any Disability or medical conditions the College is aware of;
- c) behavioural characteristics;
- d) the nature of hazards present in the relevant environment; and
- e) ordinary practices and procedures within the College.

## **6 DUTY RELATING TO RETURN TO COLLEGE OR SAFETY AT COLLEGE**

The College owes an enhanced duty of care to Students returning to the College after an absence relating to an Incident (Attempt, NSSI or an Adverse Event).

The College must, in respect of every such Student, ensure such Students only return to College with a Return to College Plan.

A Return to College Plan will be developed by the College staff (e.g. Wellbeing Specialist, Counsellors, Head of School) in consultation with the Student's parents or guardians and, where applicable, external agencies. Where appropriate, considering the age and health of the Student and the aim of strengthening their confidence and engagement via consultation, the College will also give the Student an opportunity to participate in the development of the Return to School Plan.

## **7 DUTY REGARDING DISCLOSURES**

The College recognises the right of Students to be safe, and also their right to privacy.

When the College receives a disclosure from a Student about a risk of harm or child abuse, or actual harm or child abuse, child safety reporting laws and the College's Child Safety Policy require Staff to report this to various regulatory bodies, such as the Department for Families, Fairness and Housing (Child Protection) and Police.

Regarding child safety disclosures, the College takes steps to meet its duty of care to Students by requiring Staff to follow the Child Safety Policy and Child Safety Reporting Procedure. The College also provides Staff with annual training on these policies to ensure they are implemented properly, and encourages Staff to speak with a Child Safety Officer if they have any questions about their duty of care in child safety scenarios.

Subject to any legal reporting requirements, and the terms of the Child Information Sharing Scheme, the College will seek to maintain the privacy of Students when disclosing sensitive matters relating to Students. One way the College upholds a Student's right to privacy is by, where appropriate, attempting to obtain the Student's written consent prior to disclosing any Actionable Matter to Parents or relevant authorities.

Students aged 15 and over may be regarded as being capable of consenting in their own right for privacy purposes. The College will make an assessment as to a Student's capacity to consent to the handling of their personal information, based on the Student's ability to understand the consequences of their decision.

## **8 DUTY RELATING TO COMMUNICATION CHANNELS**

The College is pro-active in the area of prevention and will communicate to Students the appropriate channels of communication for all areas of concern.

The channels of communications for staff will be made available to all staff, either electronically or in print version for all areas of concern.

The channels of communication with parents, guardians and families are the College website, Sentral Parent Portal, general information sessions (such as for a year level), and specific meetings with key staff when a Student may be identified to required different and sometimes greater measures to discharge the duty of care.

## **9 DUTY RELATING TO NOTE TAKING**

The College is aware of its obligation to take reasonable steps to ensure any personal information it collects is accurate, up-to-date and complete.

To ensure the College satisfies its obligations, all staff undertake regular training to ensure they are able to take accurate, relevant, complete and up to date notes.

Further details of recordkeeping responsibilities of Staff are in the Recordkeeping, Retention and Destruction Policy.

## **10 DUTY RELATING TO STATE OF THE PREMISES**

The College has a duty to take reasonable care that any student, or other person, on the premises is not injured or damaged because of the state of the premises, including things done or not done to the premises.

The College meets this obligation by conducting regular checks of the safety of the premises and requiring staff to report safety concerns about the state of the premises to the Head of School, Head of Campus or Admin Manager.

The College monitors and removes materials that may be easily ignited, such as branches overhanging buildings, debris and rubbish in gutters and flammable materials.

## 11 INCIDENT REPORTING

Staff must report any Actionable Matter which constitutes an Incident. Further details about safety and wellbeing reporting is in the Child Safety Reporting Procedure.

Incident reports must be created, maintained and disposed of according to the College's Child Safety Reporting Procedure and Recordkeeping, Retention and Destruction Policy.

## 12 DEFINITIONS

**"Actionable Matter"** means any actual or alleged event or situation that:

- (a) causes harm or creates a risk of causing harm to a Student's health, safety and wellbeing either directly or indirectly while under the care or supervision of the College, including international Students;
- (b) impacts a Student and is brought to the attention of the College, regardless of when or where it occurred, provided it is impacting on the Student or other Students within the College environment; or
- (c) is otherwise reportable under one of the College's policies relating to child safety, including but not limited to the child safety policy, the child safety code of conduct and the reportable conduct procedure.

**"Adverse Event"** includes an accidental drug overdose or other accidental action that may have resulted in the Student's death but did not. Common examples of adverse events that affect Students include accidents (such as traffic, car or physical accidents), assault (including physical or sexual assault, mugging or robbery, or family violence), and witnessing something terrible happen.

**"Attempt"** refers to a Student deliberately harming themselves with the intent to die but not resulting in death.

**"Disability"** can mean:

- (a) total or partial loss of the child's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the child's body; or
- (f) a disorder or malfunction that results in the child learning differently from a child without the disorder or malfunction; or

- (g) a disorder, illness or disease that affects a child’s thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour.

“**Incident**” refers to an Attempt, NSSI or an Adverse Event.

“**NSSI**” or “**Non-suicidal self-injury**” is a deliberate act by a Student to harm oneself without the intent to die, usually to reduce uncomfortable or distressing emotions and often repetitive in nature. NSSI can be referred to as self-harm (the term deliberate self-harm is also used by health care professionals).

“**Premises**” means a campus of the College and other physical locations that are part of the College environment.

“**Return to College Plan**” means the plan which outlines the College’s obligations upon a Student’s return to College after an Attempt.

“**Student**” means a student that is currently enrolled at the College.

### 13 RELATED POLICIES

- First Aid Policy;
- Asthma Management Policy;
- Anaphylaxis Management Policy;
- Child Safety Policy;
- Child Safety Code of Conduct;
- Diversity and Inclusion Policy;
- Restrictive Interventions Policy;
- Bullying Prevention and Intervention Policy;
- Internet Use Policy;
- Supervision Policy;
- Offsite Supervision Policy; and
- Suspension and Expulsion Policy.

### 14 REVIEW, COMPLAINTS AND INPUT FROM THE COMMUNITY

The College reviews this policy every two years and after any significant child safety incident and after any Incident.

If members of the College community are concerned about the care, safety and welfare of students, please contact [admin@minaret.vic.edu.au](mailto:admin@minaret.vic.edu.au). Any complaints will be handled according to the College’s Complaints and Grievances Policy.

If you have feedback about this policy, please contact [admin@minaret.vic.edu.au](mailto:admin@minaret.vic.edu.au).

### 15 BREACHES OF THIS POLICY

Staff who breach this policy may face disciplinary action, including termination of employment or engagement with the College.

**DOCUMENT CONTROL**

Doc ID: POL-MC-07

Version 2.1

Reviewed: August 2023

Review Cycle: 2 years

Approved: June 2022