

## **DUTY OF CARE POLICY**

### **Purpose**

The purpose of this Policy is to:-

- Describe the Australian Trades College WA Limited's policy in relation to the duty of care provided to student/apprentices;
- Define what duty of care is provided by the College;
- To ensure that the Australian Trades College follows the standard duty of care policies and procedures for an educational and industry-based setting;
- List the legislation to which this policy is relevant to and complies with; and
- Specify other internal documents relevant to this policy.

### **Policy Statement**

Facilitation staff are required to provide a duty to take reasonable care for the safety and welfare of student/apprentices while student/apprentices are involved in College activities or are present for the purposes of a College activity. This duty requires the College and Facilitators to take all reasonable steps to ensure the safety and welfare of the student/apprentices from both known and reasonable foreseeable risks of harm and/or injury. In particular instances, non-teaching staff, volunteers and external providers will also be required to provide a duty of care to student/apprentices. Discharge of this duty requires a Facilitator to take such proactive measures as are reasonable to prevent harm and/or injury to a student/apprentice.

The concept of 'duty of care' is based on reasonable care. Some factors to consider when judging the level of care required to a particular student/apprentice are: the student/apprentices age, experience and capabilities; physical and intellectual impairment; any existing medical conditions; behavioural characteristics; nature of the activity and the environment in which the activity is held; College policy and procedures; and the level of risks involved in any individual activity.

Duty of care extends to providing supervision for student/apprentices whilst they are on the College grounds during College hours, including reasonable supervision during morning tea, lunch, provide study, physical recreation and excursions.

### **Definitions**

**‘Duty of Care’** can be defined as a duty to ‘take such measures as are reasonable in all the circumstances to protect student/apprentices from risks of harm that reasonably ought to be foreseen.’ The term ‘duty of care’ is a legal concept that defines the duty a person has to use reasonable care towards others in order to protect them from known or reasonably foreseeable risk of harm and/or injury.

**‘Reasonable Care’** the concept of ‘duty of care’ is based on reasonable care. What is considered reasonable care will vary depending on all the circumstances

**‘College’** shall have the meaning, Australian Trades College WA Limited

**‘Reasonable Action’** which is fair, practical and sensible in a given set of circumstances.

**‘Restraint’** Limiting or controlling movement

## Legislation

- Working with Children (Criminal Record Checking) Act 2004
- Volunteers (Protection from Liability) Act 2002 (WA)
- Occupational Safety and Health Act 1984 (WA) for providing a safe environment
- Civil Liability Act 2002
- Occupiers Liability Act 1985
- School Education Act (WA) s63 (1) and 64(1)
- School Education Regulations 2000 (WA), regulations 38 and 39

## The Duty of Care policy should be read in conjunction with:

- Complaints policy
- Student Code of Conduct
- Student Handbook
- Behavioural Management policy
- Lock down policy

## Key Information

The College will provide a risk analysis for student/apprentice activities to assess the potential risks in reference to all relevant factors, and assuming the risks is not so great as to rule out the activity, to impose appropriate controls and safeguards.

The ‘duty of care’ owed to a student/apprentice by the Facilitation staff of the College is automatic, arising from the student/apprentice /Facilitator relationship. This is a ‘reasonable’ duty of care, depending on a variety of factors including but not limited to, the age of the student/apprentice, the situation, the behaviour of the student/apprentice, the location of the activity. A Facilitator’s duty of care to a student/apprentice is not limited to specific College activities, but remains constant at all times when the student/apprentice is in the Facilitator’s care. Part of the Facilitator’s duty of care towards the student/apprentice includes the Facilitator being aware of College policies such as those concerning bullying, Occupational Health and Safety, Student/Apprentice Health and the safety of equipment and grounds.

## **Duty of care provided by Non-Facilitation Staff, Volunteers and External Providers**

The Australian Trades College WA Ltd policy describes non-facilitation staff, volunteers and external providers as follows:

*Non-facilitation staff* – employees of the College who work on the school premises and are not part of the facilitation staff e.g. Administration Staff, Workshop Coordinator, Student Services.

*Volunteers* – an adult or organisation who/which offers services for College Activities, but receives no remuneration from the College for the services provided e.g. Parent / Guardians and other relatives, community members, employers who accept student/apprentices on work experience, Facilitators.

*External Providers* – a business/individual paid by the College to provide a venue, service and/or expertise appropriate to a particular College activity e.g. Sporting association, Perth Zoo, AQUA, SciTech.

Generally, non-facilitation staff, volunteers (e.g. Parent / Guardians) and/or external providers must take reasonable care to avoid doing things that could reasonably be foreseen as causing harm and/or injury to others (including student/apprentices).

Non-facilitation staff, volunteers (e.g. Parent / Guardians) and/or external providers are not generally personally responsible for student/apprentices and do not have the same duty of personal care to student/apprentices as do Facilitators.

However, in certain situations and under certain conditions Facilitators may delegate their duty of care to non-facilitation staff, volunteers (e.g. Parent / Guardians) and/or external providers in which case they will then provide the same level of care to student as a Facilitator. Before the College and/or the Facilitator delegate the duty of care responsibility to non-facilitation staff, volunteers (e.g. Parent / Guardians) and/or external providers, it is necessary for the College and/or the Facilitator to ensure the following are satisfied, as a failure to do so could result in a breach of the College and/or the Facilitator's duty of care to the student/apprentice:

- That the non-facilitation staff, volunteers (e.g. Parent / Guardians) and/or external providers are suitable for the task being delegated.
- That the non-facilitation staff, volunteers (e.g. Parent / Guardians) and/or external providers involved are covered by either the College's insurance or have in place their own adequate insurance cover.
- That the non-facilitation staff, volunteers (e.g. Parent / Guardians) and/or external providers agree to assume this personal duty of care for the student/apprentices.

- That the Facilitator has provided the non-facilitation staff, volunteers (e.g. Parent / Guardians) and/or external providers with clear instructions as to the level of care required.

### **First Aid and Health Management**

Where student/apprentices are afflicted by particular medical conditions, for example, haemophilia, asthma, a heart condition, brittle bones or epilepsy, special care must be taken to protect such student/apprentices if their condition is known or ought to be known and exposes them to a special risk of injury.

Facilitators and various Education Support Officers have a special and primary duty to the student/apprentices in their care. This duty of care requires them to refrain from doing things that might lead to a student/apprentice 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/apprentice. The duty of care provided by education personnel is that of a 'reasonable care' and will be governed by factors that include:

### **Student/apprentice age, experience and capabilities**

The level of care will generally be greater the younger the student/apprentice.

### **Physical and intellectual impairment**

A student/apprentice with a disability is generally at greater risk of injury than a student/apprentice without a disability. This could be due to a physical inability to complete the activity without difficulty or an intellectual inability to appreciate the risks involved.

### **Medical condition**

Particular medical conditions including conditions such as asthma and epilepsy require special attention to ensure that they are not exposed to a greater risk of injury.

### **Behavioural characteristics**

If a student/apprentice is known to behave inappropriately then the level of care increases.

### **Nature of the activity and the environment in which the activity is held**

College activities with a higher level of risk and held in hazardous environments require a higher level of care.

### **College policy and procedures**

Following the College's normal practices within the various policies and procedures will ensure that the Facilitator is adhering to all the steps required.

### **Assessing the level of risk involved in any individual activity**

Probability of the risk occurring;

Magnitude of the risk;

Expense, difficulty and inconvenience involved in alleviating the risk.

### **Parent / Guardians**

Parent / Guardians share responsibility with the College to ensure the provision of appropriate health care for their child. This includes:

- Parent / Guardians are responsible for providing, in writing, ongoing accurate and current medical information to the Australian Trades College WA Ltd. Furthermore, any change in a child's medical condition during the year must be reported to the College.

- For student/apprentices with an allergic condition, the College requires Parent / Guardians to provide written advice from a doctor (GP), which explains the condition, defines the allergy triggers and any required medication.
- Advising staff if their child is bringing any medication to College and completing a Health Care Authorisation.

The wearing of a medic-alert bracelet is recommended by the College.

### College

- Administration staff will notify the WACE/RTO Manager and Student Counsellor of any medical condition that has been stipulated in the student/apprentice enrolment form.
- Administration staff at the College will record all medical information pertaining to student/apprentices in MAZE.
- Student/apprentice health information will be disseminated to both Facilitation and Non-Facilitation staff
- Where student/apprentices with known allergies are participating in camps and/or excursions, the risk assessments and safety management plans for those camps and excursion will include each student/apprentices individual allergy Health Management Plan (Action Plan).

### Treatment of Allergies

The College position is not to guarantee a completely allergen free environment, rather: to minimise the risk of exposure, encourage self responsibility, and plan for effective response to possible emergencies.

The College is committed to proactive risk allergy management through:

- The encouragement of self-responsibility and learned avoidance strategies amongst student suffering allergies.
- Provision of a rigorous staff education / training programme on anaphylaxis.
- The establishment and documentation of a comprehensive management plan for the management of special student/apprentice health needs.
- The establishment of specific risk exposure minimisation practices and strategies wherever required within the College's operations.  
Close liaison with Parent / Guardians of student/apprentices who suffer allergies.
- A focus on the development of a sensitive and caring compassionate community, including regular newsletter communication with Parent / Guardians.

**'Anaphylaxis'** is a severe and sudden allergic reaction. It occurs when a person is exposed to an allergen (such as food or an insect bite). Although death is rare, an anaphylactic reaction always requires an emergency response. Prompt treatment with injected adrenaline may halt progression and can be lifesaving. Fortunately, anaphylactic reactions are usually preventable by implementing strategies for avoiding allergens.

*Common allergens for anaphylaxis are:*

- foods (peanuts and tree nuts, shellfish and fish, milk, egg);
- insect bites (bees, wasps, jumper ants);

- medications (antibiotics, aspirin).

No student/apprentice who has been prescribed an EpiPen is permitted to attend the Australian Trades College WA Ltd or its programs without providing an EpiPen and action plan to the College. EpiPens and medical action plans will be held at Reception or carried with the student/apprentice if deemed necessary.

**'Asthma'** Student/apprentices with asthma (even if only 'mild' or 'occasional') are responsible for self administering their medication. Student/apprentices with asthma need to submit an asthma care plan completed and signed by their treating doctor to Reception. The First Aid Officer at the College is also trained to administer reliever medication in the event of asthma attack. The College has reliever medication for use in emergency situations only. Student/apprentices with asthma are responsible for carrying their medication with them where recommended by a doctor.

It is recommended by the College that all student/apprentices who require asthma medication have reliever medication at Reception. All asthma puffers must have the pharmacist label, including the student/apprentice's name, stuck on the puffer.

### **Using physical restraint where a student/apprentice's safety is threatened**

Use of physical restraint in the College context is only acceptable in situations where there is an immediate risk of harm to the student/apprentice requiring restraint or to others. In certain circumstances, restraining a student/apprentice to protect property may be appropriate as an intervention of last resort.

As a general rule, physical restraint, or force of any kind, will not be used to impose the will of one person on another.

Should it be necessary to employ restraint, it must be the absolute minimum requirement to achieve a state of control where alternative means can be employed to further modify the situation.

Staff members will consider the characteristics of the individual student/apprentice requiring restraint and the circumstances surrounding the behaviour before using any force to restrain a student/apprentice. Staff members may, whenever possible, seek the assistance of other staff members before restraining a student/apprentice.

A staff member is not required to put himself or herself into a situation where his or her personal safety may be at risk in order to restrain a student/apprentice. If a staff member judges that he or she is not physically capable of intervening to restrain a student/apprentice who is in imminent of harming himself, herself or another person that staff member should seek help immediately.

Physical intervention can involve coming between a student/apprentice, blocking a student/apprentice's path, leading a student/apprentice by the hand or arm, shepherding a student/apprentice away by placing a hand in the centre of the upper back, removing potentially dangerous objects, and in extreme circumstances, using more forceful restraint.

Staff may make legitimate use of physical restraint, if all non-physical interventions have been exhausted and a student/apprentice is:

- attacking another student/apprentice or staff member
- posing an immediate danger to themselves or others.

Staff are to use physical interventions only as a last resort. Maintaining good order is never a reasonable justification for using force or restraint.

*Physical restraint is not to be used as a response to:*

- Property destruction
- College disruption
- Refusal to comply
- Verbal threats
- Leaving a classroom or the College,

### **Working with Children (Criminal Record Checking) Act 2004 (WWC)**

The Working with Children legislation aims to protect children by deterring or excluding from child-related work people who's criminal histories indicate a child may be physically or sexually harmed. A person who's WWC Check reveals a criminal history indicating that they might harm children will be barred from 'child-related work'.

WWC Checks are required by volunteers, employed and self-employed people in 'child-related work'.

Work is 'child-related work' if the usual duties of the work involve, or are likely to involve, contact with a child in the categories covered in section 6 of the Act. People who are not in 'child-related work' as defined under the Act are not eligible for a check and need not apply.

There are many work situations where there is occasional contact with children or where the customers may be children. There are also some situations where exemptions apply under the legislation. These exemptions mean that the following persons are not required to apply for a Working with Children Check and should not apply:

- Volunteers under 18 years
- Employers of children (a person under the age of 18), or adult employees who merely have contact with a minor as a fellow employee in the workplace, unless the job otherwise involves child-related work eg. child care centres
- Parent / Guardians volunteering in a club or certain activities where their children are also involved. (This exemption does not apply to Parent / Guardians volunteering on overnight camps).

## **Appendix A: Duty of Care – School-Based Applications**

### **Journey to and from place at which College Activity is undertaken**

As a general rule, the College has no 'door-to-door' responsibility for student/apprentices. However, a duty of care will be provided in situations where the College assumes responsibility for student/apprentices, such as where the College provides transport for student/apprentices to and from a College Activity, or where the College assumes responsibility for escorting student/apprentices across a railway line or busy highway.

### **Student/apprentices on College grounds before commencement of College program**

Where it is known that student/apprentices arrive at College at a certain time (e.g. if buses start delivering student/apprentices from a particular time) the responsibility of the College is to provide adequate supervision for the student/apprentices commencing at that time.

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

If student/apprentices frequently arrive at College well before the commencement of classes, the College should consider developing a roster system whereby Facilitators are requested to be on duty at a particular time before the start of the College day. This should be worked out in conjunction with the staff involved. Once a suitable time has been determined for it to be viable for staff to be on the premises to supervise student/apprentices, that time should be widely circulated amongst the Parent / Guardians of the student/apprentices by way of newsletter. The advice in the newsletter should state that there will be no one to supervise student/apprentices at College before the set time and that the College cannot accept responsibility for student/apprentices delivered to the College prior to that time. The number of supervisors that will be required for this roster system will depend upon the age and number of student/apprentices who are known to arrive prior to the commencement of the College day and upon the area to which they are directed.

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

Allowing for the fact that some Parent / Guardians will still ignore this recommendation and deliver student/apprentices to College earlier than this time, these Parent / Guardians should be contacted individually and asked to come in to the College to discuss the matter with the WACE/RTO Manager. It should be pointed out that it is impossible for the College to provide supervision for student/apprentices at these times. The Parent / Guardians should be requested to find some other way of occupying their children at this time.

These suggestions may not remove the problem but at least if there were then an accident at the earlier time and the College was required to defend itself, it could be possible to point to the

newsletters and the interviews with Parent / Guardians to say that the College had done all that was reasonable in the circumstances to ensure the safety of the student/apprentices.

### **Student/apprentices on College grounds after the close of College**

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

#### ***Student/Apprentices who leave College grounds and return later (eg, in the evenings, weekends) to use the grounds***

There will be no duty of care required to student/apprentices who leave the College grounds and return later to use the grounds (unless they return to participate in a College Activity).

#### ***Student/apprentices who remain on College grounds after being collected by Parent / Guardians***

The collection of student/apprentices at the end of the College day by, for example, Parent / Guardians will result in those Parent / Guardians or others collecting the student/apprentice assuming responsibility for supervising them while on the College grounds.

#### ***Student/apprentices who remain on College grounds whilst waiting for Parent / Guardians to collect them***

It is not reasonable to expect staff members to supervise student/apprentices whose Parent / Guardians are regularly and significantly late in collecting their children. The College should consider reporting concerns to the Department for Community Development and/or delivering student/apprentices into the care of the police if staff members regularly have to wait for significant times with student/apprentices whose Parent / Guardians have neglected to collect them.

#### ***Student/apprentices who otherwise remain on College grounds at the close of College***

There should be a Facilitator on duty for a reasonable amount of time after the close of the College to ensure that the majority of student/apprentices are no longer present. Once a suitable time has been determined for it to no longer be viable for Facilitators to remain on the premises after closure of the College to supervise student/apprentices, then that time should be widely circulated around the Parent / Guardians of the student/apprentices by way of newsletter. The advice in the newsletter should state that there will be no one to supervise student/apprentices at school after the set time and that the College cannot accept responsibility for student/apprentices remaining on College premises after that time. The number of supervisors who will be required for this roster system will depend upon the age and number of student/apprentices who are known to remain on College premises after College and the area to which they are directed.

Student/apprentices should be directed to a particular area to enable the supervisor(s) to be able to observe exactly what is occurring.

Allowing for the fact that some Parent / Guardians will allow their children to stay at the College beyond this set time, these Parent / Guardians should be contacted individually and asked to

come in to the school to discuss the matter with the Campus Manager. It should be pointed out that it is impossible for the College to provide supervision for student/apprentices at these times. The Parent / Guardians should be requested to find some other way of occupying their children at this time.

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

### **After-College sport on College grounds**

A staff member who coaches a sporting team outside College hours will be requested to provide a duty to take reasonable care for the safety of the participating student/apprentices if the sporting activity is an authorised College activity.

If an activity is not an authorised College activity, the staff member will be acting in a private capacity and the principle of vicarious liability (see Appendix 2) will not apply. Further, the College's public liability insurance cover may not extend to privately arranged sporting activities.

The wearing of a College uniform by members of a team comprised of student/apprentices of a particular College and the naming of the team by reference to a College will not necessarily convert the sporting activity to an authorised College Activity. It may, however, be the case that Parent / Guardians may be led to believe that the activity is being organised and conducted by the College. Where the sporting activity is not an authorised College activity, the CEO should advise Parent / Guardians that the College assumes no responsibility for the supervision of student/apprentices and for any aspect of the activity such as coaching.

### **Student leaving College grounds during College hours**

As a general rule, the College will not allow student/apprentices to leave college premises during the College day in circumstances where there is no Parent / Guardian permission. If a student/apprentice is permitted to leave in these circumstances, the College must be satisfied that no foreseeable harm will come to him or her.

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

The Parent / Guardian must also provide a written acknowledgement that the College cannot be held responsible for any injury that befalls the student/apprentice away from the College premises or for any misconduct on the part of the student/apprentice. Having said this, the College must be satisfied that the Parent / Guardian is giving informed permission by advising the Parent / Guardian of any concerns it has for the student/apprentices safety.

Moreover, if the College, having assessed the situation, considers that the student/apprentice may be placed at risk if allowed to leave the College premises, and then permission to leave should be refused notwithstanding that Parent / Guardian permission has been given. If, for example, the College becomes aware of unsatisfactory behaviour, risk related behaviour or other circumstances likely to affect the health, safety or welfare of the student/apprentice; it will be justified in withdrawing permission, and should discuss these concerns with the student/apprentice and Parent / Guardian.

The situation will be directly influenced by the age of the student/apprentice. There is probably no reason why the College could not accede to a request by a mature post-compulsory student/apprentice to leave the premises during free periods and breaks, provided written authority by the student/apprentice's Parent / Guardian (assuming the student/apprentice is under the age of 18) has been given.

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

### **Student/apprentices undertaking Work Experience or Work placement**

Work experience is classified as unpaid work. The employer will not remunerate the student/apprentice in cash as this would breach the terms of insurance. Whilst on work experience the student/apprentice is fully covered by the Australian Trades College's insurance policy which also covers Workers' Compensation.

Only during work placement will the student/apprentice be paid.

Student/Apprentices undertaking work placement are expected to adhere to the College's Apprentice Work Placement Policy, as well as the employer's policies and procedures.

Student/Apprentices on work placement are covered by the employer's insurance policy, not the College's.

This policy should be read in conjunction with the Australian Technical College – Perth South's Apprentice Work Placement Policy.

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<b>Related Policies / Procedures/ Documents :</b>	School Education Act 1999 School Education Regulations 2000 Occupational Safety & Health Act 1984 Complaints policy Student Code of Conduct Student Handbook Behavioural Management policy Lock down policy

	SAER policy Apprentice Work Placement Policy
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