



Rockingham Montessori School
Incorporated
ABN: 68 115 270 695

POLICY TITLE: Duty of Care Policy

BOARD APPROVAL DATE: April 2019

SIGNED BY CHAIR:

BOARD REVIEW DATE: April 2022

1. Introduction

Schools and teachers owe a duty to take reasonable care for the safety and welfare of all students in the school. The duty of care exists when the teacher/ student relationship is established.

This duty requires schools and teachers to take all reasonable steps to ensure the safety and welfare of the students from both known and reasonably foreseeable risks of harm and/or injury. In particular instances, non-teaching staff, volunteers and external providers will also owe a duty of care to students.

When preparing activities for the students a teacher needs to use their professional judgement to balance the risk of harm involved in the activity with what the students will learn from undertaking the activity. Often a teacher's professional judgement will be guided by school policies and the school's risk assessment procedure.

2. Related Legislation

- Working with Children (Criminal Record Checking) Act 2004
- Volunteers (Protection from Liability) Act 2002 (WA)
- Occupational Safety and Health Act 1984 (WA)
- Civil Liability Act 2002
- Occupiers Liability Act 1985

The following sections of the School Education Act and Regulations apply only to government schools, however, the duty of care issues are also relevant to non-government schools.

- School Education Act (WA) Section 63 (1) and Section 64 (1)
- School Education Regulations 2000 (WA), Regulation 38

3. Background

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.

The school has a duty to take reasonable care to ensure that it employs competent teachers and provides safe premises.

A teacher owes a duty to students to take reasonable care to protect them, from a known or a reasonably foreseeable risk of harm and/or injury. Discharge of this duty requires a teacher to take such proactive measures as are reasonable to prevent harm and/or injury to a student.

4. Procedures

The concept of 'duty of care' is based on reasonable care. It is not a duty to ensure no harm will come to a student but that reasonable care to avoid harm being suffered is taken. What is considered reasonable care varies depending the circumstances at the time.

Listed below are some factors to consider when assessing the 'reasonableness' of the level of care required for a particular student.

- The student's age, experience and capabilities: The level of care will generally be greater the younger the student.
- Any physical or intellectual impairment: A student with a disability may be at greater risk of injury than a student without a disability for a particular activity. This could be due to a physical inability to safely participate in an activity or the intellectual inability to appreciate the risks involved and therefore the need to exercise caution.
- Medical condition: Particular medical conditions, including asthma, epilepsy and anaphylaxis, require special attention to ensure that students who are susceptible are not exposed to a greater risk of injury.
- Behavioural characteristics: If a student is known to behave inappropriately then the level of care increases.
- Nature of the activity and the environment in which the activity is held: School activities with a higher level of risk and held in hazardous environments require a higher level of care.
- School policy and procedures: School policies and procedures will often give guidance to the suitability of certain activities for students and the care required if they are undertaken. They must be followed.
- All activities should be risk assessed before being undertaken using the schools risk assessment procedure. Assessing the level of risk involved in any individual activity means, determine the probability of harm occurring, the degree of harm that could occur and the mitigation required to make the activity's risks acceptable.
- The supervisor's level of experience, attributes and skills: A supervisor should know, understand and be able to keep students safe in the particular environment the activity is taking place in.

- The supervisor's relationship with the students: A teacher who has a 'difficult' relationship with a student may need a different approach to their duty of care than a teacher who has a positive relationship with a student.

While duty of care responsibilities may appear to impose onerous obligations on teachers, these obligations should not discourage the school from allowing students to participate in challenging or managed risk activities. Routine risk assessment strategies and efficient mitigation processes can encourage teacher participation in activities that may appear at first to be too hard to bother with.

5. **Duty of Care Owed by Teaching staff**

The teacher's duty of care responsibility is automatic, arising from the establishment of the teacher/student relationship. They must take reasonable care to make sure their acts or omissions do not cause reasonably foreseeable injury to their students.

A teacher's duty of care is not delegated to them by the parent but by the Crown and this is the reason why a teacher is expected to provide a higher standard of care than a reasonable parent. A teacher must provide a standard of care that is reasonable for a teacher to provide.

A school's duty of care is higher than a teachers. A school may be vicariously liable for a teacher's actions however in some cases the individual teacher may be liable, especially in the case of criminal conduct.

A teacher's duty of care is not limited to specific school activities such as excursions and incursions, it remains at all times whilst the student is in the teacher's care. A school's/teacher's duty of care also includes being aware of and implementing all school policies affecting students' safety and welfare, providing adequate supervision, ensuring grounds and equipment are safe for students to use, choosing appropriate persons to care for students and providing appropriate medical assistance if required.

Although there may be particular circumstances that allow a school/teacher to delegate their duty of care to others it is considered prudent that a school/teacher always assumes they have a duty of care for their students. This non-delegable duty of care applies to all on and off campus situations.

6. **Duty of care owed by Non-Teaching Staff, Volunteers and External Providers**

When non-teaching staff, volunteers and external providers agree to take personal care of students in the absence of a teacher they will owe a duty of care to the students. They must take reasonable measures to prevent harm coming to the students.

Non-teaching staff – employees of the school who work on the school premises and are not part of the teaching staff. eg Education Assistants, gardener, administration.

Volunteers – an adult or organisation who/which offers services for school activities, but receives no remuneration from the school for the services provided, eg parents/guardians and other relatives, community members, employers who accept students on work experience, student teachers.

External Providers – a business/individual paid by the school to provide a venue, service and/or expertise appropriate to a particular school activity, eg. private music teacher, Perth Zoo, AQUA, Scitech.

Non-teaching staff, volunteers (eg parents) and/or external providers are not generally personally responsible for students and do not have the same duty of care to students as do teachers.

However, in certain situations and under certain conditions teachers may delegate a proportion of their duty of care to non-teaching staff, volunteers (eg. parents) and/or external providers. In this case the non-teacher will then owe the same level of care to students as a teacher.

Before the school and/or the teacher delegates the duty of care responsibility to non-teaching staff, volunteers (eg parents) and/or external providers, it is necessary for the school and/or the teacher to ensure the following are satisfied, as a failure to do so could result in a breach of the school and/or the teacher's duty of care to the student:

- That the non-teaching staff, volunteers (eg parents) and/or external providers are suitable for the task being delegated.
- That the non-teaching staff, volunteers (eg parents) and/or external providers involved are covered by either the school's insurance or have in place their own adequate insurance cover.
- That the non-teaching staff, volunteers (eg parents) and/or external providers **agree** to assume this personal duty of care for the students. They have the right to refuse unless it is part of their normal duties.
- That the teacher has provided the non-teaching staff, volunteers (eg parents) and/or external providers with clear instructions as to the level of care required.

It is recommended that these instructions for caring for students, the level of care required and the acceptance of this responsibility be recorded in writing and signed by the non-teaching staff, volunteers (eg parents) and/or external providers.

7. Working with Children (Criminal Record Checking) Act 2004

The Working with Children (Criminal Record Checking) Act 2004 aims to protect children from harm by providing a high standard of compulsory national criminal record checking for people wishing to do paid, unpaid or volunteer child-related work in Western Australia.

The Working with Children Check (WWC Check) considers criminal records to see if people have charges or convictions that indicate they may harm a child (persons under the age of 18). A person who's WWC Check reveals a criminal history indicating that they might harm children will be prohibited from 'child-related work'.

7.1 Who is required to get a WWC Check?

Under the WWC Act, people whose **usual duties** of work involve (or are likely to involve) contact with a child (under 18) in connection with one or more categories of child-related work are required to have a WWC Check.

Work is 'child-related work' if the **usual duties** of the work involve, or are likely to involve, **contact** with a child in connection with one of the categories covered in section 6 of the *Working with Children (Criminal Record Checking) Act 2004* (The WWC Act). People who are **not** in 'child-related work' as defined under the Act are not eligible for a Check and should not apply.

The following extract comes from **The WWC Act Section 6:**

Work is "**child-related work**" if the usual duties of the work involve, or are likely to involve, contact with a child in connection with:

(iii) an educational institution for children;

(iv) a coaching or private tuition service of any kind, but not including an informal arrangement entered into for private or domestic purposes;

(v) an arrangement for the accommodation or care of children, whether in a residential facility or private residence, but not including an informal arrangement made by a parent of the child concerned or accommodation or care provided by a relative of the child;

(xv) an overnight camp, regardless of the type of accommodation or how many children are involved;

(xvi) a transport service specifically for children;

(xvii) a school crossing service, being a service provided to assist children to cross roads on their way to or from school;

(xviii) a children's entertainment or party service; or

(xix) any other work of a kind prescribed by the regulations.

Other examples of child-related work in the education and training sector are inclusive of but not limited to:

- People tutoring children, whether individually or in groups (not including informal arrangements);
- Teaching staff of schools, community kindergartens or pre-primary schools;
- Training providers who run coaching or private tuition classes primarily for children;
 - School support staff working in various areas in a school and who have contact with children as part of the usual duties of their work;
 - People who provide health services to school children at the school;
 - The grounds person who works during school hours, and assists with activities that involve contact with children, as part of the usual duties of the work;
 - School bus drivers;

- Entertainers who provide services to children at schools;
- Sports coaching or private tuition services for school children;
- TAFE lecturers and other staff whose usual duties involve or are likely to involve contact with a child;
- Students on placement doing child-related work, such as student teachers or nurses working in connection with one of the 19 categories;
- Volunteers helping with various school activities (except parents whose children are enrolled at the school)*;
- Parents volunteering at overnight school camps.

7.2 What is contact?

Contact is defined as:

- Any form of **physical contact**;
- Any form of **oral communication**, whether face to face, by telephone or otherwise; and
- Any form of **electronic communication**

The contact needs to occur as part of a person's usual duties but does not include contact in the normal course of duties between an employer and an employee (including employees under 18 years) or between employees of the same employer.

7.3 Who is ineligible for a WWC Check?

Exemptions, under the legislation, mean that the following persons are not required to apply for a Working with Children Check and should not apply:

- Volunteers and students on unpaid placement who are under 18 years or age;
- Parents volunteering at a school in which their child is enrolled. (This exemption does not apply to parents volunteering at overnight camps).
- Short-term visitors to WA carrying out 'child-related work' during the period of 2 weeks after their arrival in Western Australia, and for no more than 2 weeks in any period of 12 months.
- Persons not ordinarily resident in Western Australia who are involved with a 'one off' **national event** taking place in WA (eg Scout jamboree); or a 'one-off' **national tour** (eg AFL Under 18 All Australian Team tour; Australian Ballet School national audition tour) that stops at several different venues and locations in Australia, including at least one stop in WA.

In the context of the Working with Children Act, a national event or tour is one that:

- takes place over a specific period;
 - is organised by a recognised body for sporting, educational, religious, cultural, recreational or skill development purposes; and

- in which children from more than one state, territory or country are participating.
- is for a non-cumulative period of 30 days within a 12 month period (the person can access the exemption once in a 12 month period whether they use 10 days or the 30 days for that one-off national event or national tour); and

This type of exemption cannot be used in conjunction with the short-term visitor exemption (above). A person cannot use both exemptions in the same 12 month period.

Parent or Adult Student volunteers may be required to complete a Confidential Declaration or have either a National Police Check for Volunteers or a National Police Certificate, if a WWC Check is not required. (Appendix 1)

7.4 Obligations of all Parties

Paid employees and volunteers

Employees and volunteers have responsibilities and obligations under the WWC legislation. Not complying with these responsibilities can result in fines of up to \$60,000 and up to five years' imprisonment.

- If you are in child-related work, you must hold a current WWC Card or have a pending application within the required time. See the information provided regarding the five day threshold.
- You must apply for a WWC Check within the time stated if asked to do so by the WWC Screening Unit.
- You must not give false or misleading information to the WWC Screening Unit.
- You should update your address and employment details on the WWC website if they change.
- The WWC Check must be renewed every three years, if you are still in child-related work.
- You must not carry out child-related work if you have been convicted of a Class 1 offence committed as an adult.
- You must return your WWC Card to the WWC Screening Unit as soon as practicable after being convicted of a Class 1 offence committed as an adult or if your WWC Card is cancelled by the WWC Screening Unit.
- If you have been issued with an Interim Negative Notice or a Negative Notice you must not carry out child-related work, and you must return your WWC Card to the WWC Screening Unit as soon as practicable.
- If you are issued with an Interim Negative Notice you cannot withdraw your application for a WWC Card.
- If you are charged with or convicted of a Class 1 or Class 2 offence you are required to provide written notice to your employer of the change in your criminal record. You do not have to provide details of the offence, only state that there has been a 'relevant change'. You must also give written notice to the WWC Screening Unit.

- If you have a current WWC Card and have a relevant change in your criminal record and are no longer in child-related work you are still required to give written notice to the WWC Screening Unit of the relevant change. Your Card will be cancelled and you cannot start child-related work until you have been issued with a further WWC Card or made an application for one. You must also notify your proposed employer that there has been a relevant change to your criminal record and that you have applied for a new WWC Check.

Employers and organisations

Employers of people in child-related work, including paid employees and volunteers, and self-employed people in child-related work have a number of responsibilities under the Act. These are to:

- Ensure that all volunteers, paid employees and self employed people in child-related work have applied for a WWC Check by the date required.
- Not engage a person in child-related work on more than five days in a calendar year unless they hold a current WWC Card or have applied for one unless you are a licensed child care service (in which case your employees, volunteers or students must hold a valid WWC Card or have applied for one **before** they start work).
- Keep adequate records that demonstrate the organisation is complying with the WWC legislation. (Appendix 2)
- Check, record and validate (using the validation facility on the WWC Check website) the WWC cards of all new employees, volunteers, students and self employed contractors and periodically check and record that all current employees' and volunteers' WWC Cards are valid, current and have not been cancelled.
- Have strategies to ensure employees and volunteers renew their cards every 3 years.
- Register your organisation as an employer on the WWC Check website to advise us when you have new employees, volunteers and students who already have a WWC Card from a previous employer. This will enable the WWC Screening Unit to better protect children by enabling them to advise you about any changes in status of the person's WWC Card and of other matters if necessary.
- Notify the WWC Screening Unit in writing if you reasonably suspect an employee, volunteer or student has been charged with or convicted of an offence which makes it inappropriate for them to continue to carry out child-related work.
- Not give false or misleading information to the WWC Screening Unit.
- Not start or continue someone in "child-related work" if the person has an Interim Negative Notice, a Negative Notice, or if their WWC application has been withdrawn, or if they are aware of a conviction or pending charge for a Class 1 or Class 2 offence against that person and they have do not hold a current WWC Card and have not applied for one.
- Comply with the WWC Act despite another Act or law or any industrial award, order or agreement. (you will not incur any liability if you do so).

An employer not complying with their responsibilities can be fined up to \$60,000 and receive five years' imprisonment.

It is vital that schools not only sight the WWC card of volunteers and self-employed people but check the validity of the card by going to the Working with Children Website. Police are concerned with the number of people working with children who say they have a valid WWC card, however on further inspection it is discovered that they either do not have a card or have been issued with a Negative Notice.

7.4 Impact on schools – including points related to the increased student age differential on campus

Adult aged students:

The WWC Act **does not** require adult students to apply for a WWC Check just because they are involved in activities with younger students as part of the school day. Examples of activities commonly experienced as part of the normal course of schooling where adult students are **unlikely to require a WWC Check** include:

- When they have been asked by their teacher(s) to help other students (who are younger than 18 years of age) in their class, eg with the school work during school time whether or not they remain under teacher supervision;
- When they have been asked to show younger students where school classes and facilities are located on school premises;
- Where they have been asked to be a 'buddy' or participate in similar mentoring activities at school;
- Where they serve on the school council; or
- Where they are involved in activities alongside younger students or their younger peers (eg in rowing or when playing a game of basketball or football), regardless of whether these activities occur during school time or in after school hours, such as weekend).

However, adult students **will require** a WWC Check if they agree to carry out work on behalf of the school in a context that is beyond or exceeds that normally experienced or undertaken by the student in the normal course of their schooling. That work must include **usual duties** that are likely to involve **contact with a child** in connection with certain categories (including the education institution at which they are enrolled).

As an example, if an adult student enters into a formal arrangement to provide coaching or private tutoring outside of school hours specifically for a younger student or group of younger students (aged below 18 years), this is likely to **require a WWC Check**, regardless of whether a teacher organised it or whether there is parental or other adult supervision.

A student who has a paid job at the school (before or after school hours) or with a contractor who provides child-related services to the school, **will also require a WWC Check.**

Duty of Care – School-Based Applications

Liability in negligence cases depends upon the application of a standard of reasonableness in all the circumstances. Each case will therefore be different, based on its own particular set of facts.

Journey to and from place at which School Activity is undertaken

As a general rule, a Rockingham Montessori School does not have a ‘door-to-door’ responsibility for students. However, a duty of care will be owed in any situation where the School assumes responsibility for Students, such as where the School provides transport for students to and from a school activity, or where the School assumes responsibility for escorting students across a railway line or busy highway.

Students on school grounds before school

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

If students frequently arrive at school well before the commencement of classes, the school will contact parents/guardians and advise of the drop off time and that students must sit in the office until such time that staff are on duty in their classrooms.

Advice in the newsletter states that there will be no one to supervise children at school before 8.30am and that the school cannot accept responsibility for students delivered to the school prior to that time.

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

Students on school grounds after the close of school

All Children’s House and Primary aged students are to be collected by parents from classrooms and arrangements for release of Adolescent students are to be advised by parents/guardians to the School. Where the presence of students on school grounds is known or ought to be known, the question to be asked is whether it is reasonable in the circumstances to impose responsibility on a staff member for students using the school grounds at the close of the school day. The various scenarios a school may encounter may be summarised as follows:

Students who leave school grounds and return later (eg, in the evenings, weekends) to use the grounds.

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

Students who remain on school grounds after being collected by parents

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

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

Students waiting for collection by an after school care bus are required to wait in the administration office. The responsibility for providing adequate supervision will extend at least until the last bus departs the premises.

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

Students who have not been collected from class by a parent/guardian will be taken to the administration office to wait for collection. However, it is not reasonable to expect staff members to supervise students whose parents are regularly and significantly late in collecting their children. Rockingham Montessori School may consider reporting concerns to the Department for Community Development and/or delivering students into the care of the police if staff members regularly have to wait for significant times with students whose parents have neglected to collect them.

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

There should be a teacher on duty for a reasonable amount of time after the close of school to ensure that the majority of students are no longer present. Once a suitable time has been determined for it to no longer be viable for teachers to remain on the premises after school to supervise students, then that time should be widely circulated to the parents/guardians/carers of the students by way of newsletter. The advice in the newsletter should state that there will be no one to supervise students at school after the set time and that the school cannot accept responsibility for students remaining on school premises after that time.

Students 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 parents will allow children to stay at school beyond this set time, these parents should be contacted individually and asked to come in to the school to discuss the matter with the principal. It should be pointed out that it is impossible for the school to provide supervision for students at these times. The parents should be requested to find some other way of occupying their children at this time.

After-school sport on school grounds

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

Students leaving school grounds during school hours

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

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

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

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

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

7.4 B More information about employer and employee obligations is available from [Factsheet 10: Information for the Education Sector](#) (employers) and [Factsheet 6: Information for Employees and Volunteers](#) at www.workingwithchildren.wa.gov.au

Appendix

1. Confidential Declaration
2. Working with Children Record Keeping



CONFIDENTIAL DECLARATION

This form is for persons requiring access to schools who are not employees of the school and are not covered by the Working with Children legislation.

Please place a tick in **one** of the boxes below.

I declare that I **do not have** any convictions, circumstances or reasons that might preclude my working with or near children.

I declare that I **do have** convictions, circumstances or reasons that might preclude my working with or near children. The nature of these convictions, circumstances or reasons is outlined below.

I certify the accuracy of the above information. I am aware that I may be required to provide a police clearance if is considered necessary to verify the information provided.

Name: _____

Date: _____

(BLOCK PRINT PLEASE)

Signature: _____ Address: _____

Company: _____ Telephone: _____

Appendix 2: Working with Children Check (WWC) Record Keeping

Teaching Staff

Full Name	Date of Birth	Year levels qualified to teach	TRB Registration Details				Working with Children Card details		Date of commencement at school
			Registration Number	Financial Member Y (yes) N(no)	Category Full (FR)Provisional (PR)Limited (LR)Non-practising (NPR)	Number	Expiry		

Non-Teaching Staff

Full Name	Role	Working with Children card details		Police Clearance details		Date of commencement at school
		Number	Expiry	Date	Number	