



GORDON INSTITUTE OF TAFE

(ABN 27 241 053 246 RTO 3044 CRICOS 00011G)
Private Bag 1, Geelong Mail Centre, Victoria, Australia
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Duty of Care to Students Policy

1. Statement of Policy

This document explains the nature of the legal duties owed by Gordon staff towards Gordon students and participants.

2. Scope

This document applies to all staff within The Gordon and includes all volunteers, part-time and casual staff, the Executive leadership team and the Board of Directors.

3. Definitions

The following terms and abbreviations are specific to this policy:

Child Safe Standards: is a compulsory framework that supports organisations to promote the safety of children by requiring them to implement policies to prevent, respond to and report allegations of child abuse. The legislation that created the Standards is the *Child Wellbeing and Safety Act 2005*.

Duty of care: is a legal concept that has its origins in the common law. It is a duty imposed by the law to take care to minimise the risk of harm to another. The duty of care principle not only underpins, but to a large extent drives many Institute policies. The Institute owes a duty of care to take reasonable precautions to prevent the abuse of a child by an individual associated with the organisation while the child is under the care, supervision or authority of the organisation. The Institute also owes a duty of care to take reasonable care that any student (and any other person) on the premises will not be injured or suffer damage by reason of the state of the premises or by things done or omitted to be done in relation to the state of the premises.

Vulnerable students: The principle of reasonable care varies according to the circumstances, however the principle of “reasonable” will be higher for a vulnerable student, a vulnerable student considers: The student’s age and experience– and particularly applies to any student under 18 years of age (a youth) in The Gordon’s adult learning environment.

1. **Physical and intellectual impairment** – a student with a disability may be exposed to a higher level of risk of injury than a student with a disability. This may be because the student with a disability suffers from an impairment of motor skills or physical coordination, a lack of inhibition or control, or it may be because the student has a limited appreciation of the possibility of danger. Where the physical or intellectual disability is such as to enlarge the risk inherent in undertaking an activity.
2. **Medical conditions** - Where students are afflicted by particular medical conditions, for example, diabetes, asthma, anaphylaxis, or epilepsy, special care must be taken to protect such students if their condition is known or ought to be known and exposes them to a special risk of injury, then appropriate precautions must be taken.
3. **Culturally and linguistic background** – Where students cannot or have difficulty communicating in English, or are culturally isolated and do not understand Australian laws and norms; this particularly applies to international students and many recent migrants and refugees.
4. **Social Identity** – The safety and wellbeing of all students is paramount.

Students from diverse backgrounds including those who identify as Aboriginal and/or Torres Strait Islander, Culturally and Linguistically Diverse, Lesbian, Gay, Bisexual, Trans, Intersex, Queer + (LGBTIQ+), Non-binary, and those living with disability may require a tailored and sensitive approach to meet their safety and wellbeing needs.



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The safety and wellbeing of students and participants is an institutional priority requiring an institute-wide approach, led from the top.

5. **Safety of students and participants under the age of 18** - The safety and wellbeing of students and participants under the age of 18 is prioritised regardless of their enrolment status. The Gordon is committed to complying with the *Victorian Child Safe Standards* and the overarching principles under the *Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015 (Vic)* and the *National Principles for Child Safe Organisations*.

The Gordon has a ZERO TOLERANCE approach to any form of abuse against a student or participant under the age of 18 and will do all that is possible within its powers to prevent or minimise the opportunity of a child or young person under its care being abused or facing/suffering any or further harm.

The Gordon adopts the best interest principle as outlined in Section 10 of the *Children, Youth and Families Act 2005 (Vic)*, ensuring the best interest of the child or young person is given paramount consideration.

6. **Duty of Care** - is a legal concept that has its origins in the common law. It is a duty imposed by the law to take care to minimise the risk of harm to another. The duty of care principle not only underpins, but to a large extent drives many Institute policies. The Institute owes a duty of care to take reasonable precautions to prevent the abuse of a child by an individual associated with the organisation while the child is under the care, supervision or authority of the organisation. The Institute also owes a duty of care to take reasonable care that any student (and any other person) on the premises will not be injured or suffer damage by reason of the state of the premises or by things done or omitted to be done in relation to the state of the premises.

The principle of reasonable care applies to all students and participants, however an additional level of reasonable care applies to students or participants who:

- a) Are under the age of 18, particularly when engaged in an adult learning environment
- b) Live with a disability that may result in cognitive or intellectual impairment, impacting their ability to keep themselves safe.
- c) Live with a medical condition that may pose a higher risk and require additional precautions such as diabetes, anaphylaxis or asthma.
- d) Identify as Lesbian, Gay, Bisexual, Transgender Intersex, Queer +, Aboriginal or Torres Strait Islander or culturally and linguistically diverse and require an alternate and sensitive approach to ensure their unique safety and wellbeing needs are met.

Gordon staff are held to a high standard of care in relation to students. The duty requires all staff to take reasonable steps to reduce risk, a duty that can only be fulfilled by the individual and not assigned to someone else.

Within the teacher-student relationship, teaching staff have a unique duty of care. Teaching staff are required to take all reasonable measures to protect a student for whom they are responsible from any foreseen risk of injury or harm.

Gordon staff's duty of care responsibilities for students and participants over the age of 18 apply while the student is in the presence of the teacher, in the allocated physical environment (classroom, laboratory, library) and during the allocated time as specified in the timetable, program schedule or via other accessible communication. While students are on campus, they are owed a duty of care from the Institute and this duty is not held solely by teaching staff.

The duty of care responsibilities for students and participants under the age of 18 (excluding VETDSS) apply from the allocated start time or the time the student is physically present until the time they are permitted to leave. This extends to any physical environment (classroom, laboratory, library) on campus and during the allocated time as specified in the timetable, program schedule or via other accessible communication.

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Students under the age of 18 (excluding VETDSS) are permitted to leave the supervision of allocated teaching staff for breaks, to use onsite-only amenities such as the cafeteria, gardens or library. Parents / guardians must be informed if there is any alteration to the allocated start and finish times. VETDSS students are not allowed, to leave campus earlier than the allocated time as per communication and must be supervised by the responsible teacher at all times. Any late arrivals or early departures must be reported to the schools via the VETDSS team.

Exemptions apply if the student produces a note signed by both parent/guardian and the school coordinator or is signed out of class by a parent/guardian in the presence of a Gordon staff member. Any late arrivals or early departures must be reported to the schools via the VETDSS Office. Further information relating to the supervision of VETDSS students can be found in the *VETDSS Teacher Information Handbook VP RD 01.01*.

4. Principles

4.1 Reduction of Risk

Gordon staff are held to a high standard of care in relation to students. The duty requires all staff to take reasonable steps to reduce risk, including:

In determining precautions that could be reasonably expected to be taken the following factors should be considered:

- Provision of suitable and safe premises
The methods by which The Gordon meets these principles are documented under the *Occupational Health and Safety Policy Framework*
- Provision of adequate supervision in classrooms and workshops
The methods by which The Gordon meets these principals are documented under the *Timetabling procedures*
- Ensuring that medical assistance is provide to a sick or injured student
The methods by which The Gordon meets these principles are documented under the *Management of Medical Conditions Procedure RISK PR 16 and First Aid Procedure OHS PR 04*.
- Implementation of strategies to prevent bullying, harassment, intimidation or harm
The methods by which the Gordon meets these principles are documented under the *Employee and Student Codes of Conduct SHRD RD 20.01 and QA RD 11.01*.
- Implementation of strategies to prevent discrimination and harassment
The methods by which The Gordon meets these principles are defined under the *Access and Equity Policy – Student SAE PO 01*.
- Provision of pastoral care processes
The methods by which The Gordon meets this principle are defined under the *Student Counselling and Support Procedure SAE PR 03*

This duty to reduce risk is non-delegable, meaning that it cannot be assigned to another party.

4.2 Maintaining Responsible Relationships

Whenever a teacher-student relationship exists, teachers have a special duty of care. This has been expressed as: “a teacher is to take such measures as are reasonable in the circumstances to protect a student under the teacher’s charge from risks of injury that the teacher should reasonably have foreseen”.

In determining precautions that could be reasonably expected to be taken the following factors should be considered:

- The probability that the harm would occur if care were not taken
- The likely seriousness of the harm
- The burden of taking precautions to avoid the risk of harm
- The social benefit of the activity that creates the risk of harm

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The methods by which The Gordon meets these principles are documented under the *Risk Management Policy and Procedure RISK PR 01*; the *Employee Code of Conduct SHRD RD 20.01*; the *Practical Placement Procedure RISK PR 22*; and the *Student Excursions and Camps procedure RISK PR 21*.

Whenever a teacher-student relationship exists, teachers must ensure that they always behave in a professional relationship with their learners, whether at the Institute or not, and recognise there are limits or boundaries to their relationship with learners. This requires the teacher to ensure:

- They only interact with the student as a learner, not as a friend, counsellor or surrogate parent
- Avoid conversations of a personal nature or have contact with a learner via personal email, letters, telephone, text messages, chat lines or social media.
- Only communicate with students via Gordon email addresses and SMS services.
- Are respectful of, and courteous to, parents and carers
- Adhere to relevant privacy obligations

The methods by which The Gordon meets these principles are documented under the *Employee Code of Conduct SHRD RD 20.01* and the *Professional Boundary Guidelines RISK RD 15.03*.

4.3 Providing Responsible Advice

All staff, but particularly teachers are called upon to advise students. When doing so staff should:

- Limit their advice to students to areas within their own professional competence and/or their capacity arising from a role specified for them by the Gordon.
- Ensure that the advice they give is correct and in line with the most recent Gordon policies, procedures and code of conduct.
- Avoid giving advice in areas unrelated to their role or where they may lack expertise
- Refer matter to appropriate staff where they lack the delegated authority to provide advice
- Be aware of cultural and linguistic diversity, people living with disability and Indigenous students' unique needs.

The methods by which The Gordon meets these principles are documented under the *Employee Code of Conduct SHRD RD 20.01*.

4.4 Following Mandatory Reporting Requirements

Gordon staff and anyone of or over the age of 18 years, are **mandated by law** to report any disclosure, allegation or suspicion of sexual abuse against a child under the age of 16 years by another person over the age of 18 years to the Victoria Police under the 'failure to disclose' offence under *s327 Crimes Act 1958 (Vic)*.

The obligation to disclose applies to any person who has information to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person over the age of 18 years. That information must be reported to police as soon as practicable.

A reasonable belief is more than suspicion, there must be an objective basis for the belief, but it is not the same as having proof. You must form the belief that it is more likely than not that something occurred.

There are reasonable excuses for failing to disclose and these are:

that a person fears on reasonable grounds for their safety or the safety of another person (not the alleged abuser) if they report the abuse and the failure to disclose to the police is reasonable in the circumstances; or

the person believes on reasonable grounds that the information has already been disclosed to police by another person and the first-mentioned person has no further information

It is not an offence to fail to disclose if the victim is of or over the age of 16 and at that age provided a reporter with the information and has specifically requested that they do not disclose the information.



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However, if at the time of the abuse the victim had an intellectual disability or lacked capacity to make an informed decision about whether to disclose the information, (and the reporter was aware or should have been aware of those circumstances), the matter should be reported to the police.

It is not an offence to fail to disclose if the information came into a person's possession when they were a child, or when the information was subject to legal privilege or were confidential communications under the s32B the *Evidence Act 1958* (Vic).

It is not an offence to fail to disclose if the information came into the reporter's possession solely from the public domain. It is not an offence to fail to disclose if the information came into the reporter's possession when they carried out the duties of a police officer and/or if the victim was over the age of 16 years when the 'failure to disclose' provision came into effect under the *Crimes Act 1958* (Vic) in 2014.

Gordon staff and anyone of or over the age of 18 years, who know there is a risk of abuse and have the power or responsibility to reduce or remove the risk are **mandated by law** to do so. Those who negligently fail to do so are committing an offence under the 'failure to protect' offence under *s49O Crimes Act 1958* (Vic).

Specific Gordon staff are **mandated by law** to report any disclosure, allegation or suspicion of abuse of a child or young person to Child Protection and/or the Victoria Police under the *Child, Youth & Families Act 2005* (Vic). This list includes:

- Doctors
- Nurses
- Midwives
- VIT registered teachers (including early childhood teachers)
- Principals
- Police
- Out of home care workers (excluding voluntary foster and kinship carers)
- Early childhood workers
- Youth justice workers
- Registered psychologists
- School Counsellors

Mandated reporters are required to make a report on each occasion that they form a reasonable belief that abuse against a child or young person has occurred. Mandated reporters must make a report as soon as is practicable even if the principal or equivalent does not share their belief; and they must make a report in instances where another mandated reporter has undertaken to make a report.

However, regardless of the legislation, *all* Gordon staff and anyone of or over the age of 18 years are **mandated by this policy** to report any reportable concerns (disclosure, allegation or suspicion of abuse of a child or young person) to Child Protection and/or the Victoria Police.

Failure to report is an offence, a breach of compliance under this policy and the *Employee Code of Conduct* for Gordon Staff. Serious penalties and consequences may apply.

Other related offences

Under *s49M Crimes Act 1958* (Vic) it is **illegal** for an adult to communicate, by words or conduct, with a child under the age of 16 years or with a person who has care, supervision or authority for the child with the intention of facilitating the child's involvement in sexual conduct. This is referred to as the 'grooming' offence.

Gordon staff and any person of or over the age of 18 years are **mandated by law** to report any intentional action that has resulted in, or appears likely to result in significant harm of a child. Any person who intentionally takes action to harm a child, or intentionally fails to take action to prevent significant harm

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of a child is committing an offence under the 'duty of care' provision of the *Children, Youth & Families Act 2005*.

Gordon Staff and any person of or over the age of 18 years are **mandated by law** to report any **reportable conduct** committed by adult employees and other adults associated with an organisation to the Commission for Children and Young People. This mandate is required under the *Children Legislation Amendment (Reportable Conduct) Act 2017*.

The methods by which The Gordon meets these principles are documented under the *Employee Code of Conduct SHRD RD 20.01*; and the *Child Safe Standards Statement of Commitment RISK RD 15.01*, the *Student Safety Policy RISK PO 30* and the *Responding to Student Safety Concerns Policy and Procedure RISK PR 31* and *Responding to Student Safety Concerns Flowchart RISK RD 31.01*.

4.5 Treating Students with Courtesy and Dignity

All staff, but particularly teachers are required to treat their learners with courtesy and dignity, respecting a student's privacy on sensitive matters, such as health, family problems or previous unlawful activity, and only reveal confidential matters to authorised staff when appropriate. That is:

- If the student has consented to the information being for a disclosed purpose
- To present or lessen a serious threat to life, health, safety or welfare of a person (including the student)
- As part of an investigation into unlawful activity at the request of the investigator
- If the disclosure is required or mandated by law
- To prevent a crime occurring.

All staff refrain from discussing student's personal problems in situations where the information may not be treated confidentially.

5. Governance / Responsibilities

POSITION	GOVERNANCE / RESPONSIBILITY
Student Services	Provide pastoral support programs for vulnerable students enrolled at The Gordon
Head People, Safety and Culture	Ensure that the Gordon provides staff with access to information and training in relation to duty of care and their obligations in relation to key risks, such as bullying and harassment, and mandatory reporting
Head People, Safety and Culture	Ensure that all Gordon staff have a Working With Children's Check or national police check as required for their role
Heads of Centres/VEMs	Verify that any underage enrolment accepted by The Gordon meets legislative criteria for admission of underage students and that the process document in relevant policies and procedures is followed
Teaching staff	Supervise learning environments and take such measures as are reasonable in the circumstances to protect a student under the teacher's charge from risks of injury that the teacher sees or should reasonably have foreseen
All employees, contractors and volunteers	Comply with their obligations under the Child Safe Standards for mandatory reporting

Failure to comply with this policy may be considered misconduct.

6. Key Aligned Internal Documents

Refer to the [Operational Management System \(OMS\)](#) for copies of all policies, procedures and supporting documents.

Child safe standards statement of commitment RISK RD 15.01



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P +61 3 5225 0800 www.thegordon.edu.au*Mandatory reporting process RISK RD 15.02**Professional Boundary Guidelines RISK RD 15.03**Student Safety Policy RISK PO 30**Student Safety Concerns Policy and Procedure RISK PR 31**Risk Management Policy and Procedure RISK PR 01**Management of Medical Conditions RISK PR 16**Student Excursions and Campus Procedure RISK PR 21**Practical Placement Procedure RISK PR 22**First Aid Procedure OHS PR 04**Student Code of Conduct QA RD 11.01**Student Access and Equipment Policy SAE PO 01**Student Counselling and Support Procedure SAE PR 03**Employee Code of Conduct SHRD RD 20.01***7. Review and approval**

	POSITION	AREA
Business Process Owner	Manager	Risk, Safety and Wellness
Endorsed by (if applicable):	Risk and Compliance Committee	
Ratified by (if applicable):	Board	
Review schedule:	This policy will be reviewed every year (or earlier as required)	
Last reviewed / updated:	1 October 2021	