Procedure

DECD14/14758

Accidents to children, students or visitors

Summary

This procedure is to advise staff of the matters surrounding the management of accidents to children, students or visitors on Departmental premises.

<table>
<thead>
<tr>
<th>Publication Date</th>
<th>31 May 2011</th>
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<tbody>
<tr>
<td>Review Date</td>
<td>31 May 2014</td>
</tr>
<tr>
<td>Related Legislation/Applicable Section of Legislation</td>
<td>Civil Liability Act 1936</td>
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</table>
|               | DECD Workplace Learning Guidelines 2004
|               | Guidelines for Ambulance Use and Claims |

Replaces

Accidents to Children, Students or Visitors May 2011

Policy Officer (Name/Position) Fiona Wicks, Manager Claims

Policy Officer (Phone) 8226 1822

Policy Sponsor (Name/Position) Kathy Rozaklis, Director Legal Services

Executive Director Responsible (Name/Position/Office) Julieann Riedstra, Deputy Chief Executive Resources

Applies to All DECD staff
<table>
<thead>
<tr>
<th>Key Words</th>
<th>Accident, injury, claim</th>
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<tr>
<td>Status</td>
<td>Under review – April 2015</td>
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<tr>
<td>Approved by</td>
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<td>Approval Date</td>
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<tr>
<td>Version</td>
<td>1.1</td>
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<td>Date</td>
<td>Version</td>
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<td>31 March 2015</td>
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1. TITLE
Accidents to Children, Students or Visitors

2. PURPOSE
This procedure is aimed at advising DECD staff about how to manage accidents that occur on Departmental premises involving children, students or visitors and to ensure staff are aware of the applicable claims management processes to ensure appropriate compliance.

3. SCOPE
This procedure applies to any DECD employee who becomes aware of or is faced with managing an accident involving children, students or a visitor.

4. PROCEDURE DETAIL

4.1. General claims management principles
In South Australia liability as an owner/occupier of Minister’s property is governed by Part 4 of the Civil Liability Act 1936 which provides that liability will be determined in accordance with the principles of negligence. Generally the standard of care owed by the occupier of premises is one of reasonable care. What is reasonable will vary with the particular circumstances. The Act provides that the standard of care to be exercised by the occupier of premises will take into account factors including the following:

- the nature and extent of the premises;
- the circumstances in which the person suffering injury, damage or loss, or the property of that person, became exposed to the danger;
- the extent to which the occupier was aware, or ought to have been aware of the danger and the entry of persons onto the property; and
- any measures which were taken, or could reasonable have been taken, to eliminate, reduce or warn of the danger.

Except for approved students on work placement and bona fide volunteers, the department does not accept general responsibility in the event of an accident involving children, students or visitors. However, claims for expenses may be met if, on the basis of legal opinion, the injury is attributable to a wrongful act or omission on the part of the Minister for Education, his staff or agents.

Parents are encouraged to insure their children against accidental injury.

Generally a child has until they are 21 to sue for an injury, however 2004 changes to law affect incidents that occurred after 1 May 2004.

These changes mean that if a child is under 15 years of age when injured, parents, carers or legal guardians must notify the person allegedly responsible for the injury, of the child’s intention to make a legal claim within six years of the date of injury.

Failure to do so does not exclude a child from suing later, but by the time the child reaches 21 years of age without having taken legal action for the injury, they may face a reduction in compensation or a loss of their legal rights.

Injuries to employees require special reporting procedures. Information relating to worker’s compensation and claims management processes can be found at:

Insurance cover for students involved in work placements is dealt with in the manual “Workplace Learning Guidelines 2004”.

4.2. Claims lodgement/process

If a claim against the department arises it must be lodged by the parents/guardians (or the student if he/she is an adult) and must be in writing. Documentary evidence of expenses should accompany the claim.

Liability must not be admitted nor should an offer be made to arrange payments of compensation or damages.

Intending claimants should be informed that it is not appropriate to request doctors and other service providers to render accounts in the name of the department or for that matter any of its work sites.

Claims should be directed to the following address:

Manager, Claims
Legal Services Directorate
Department for Education and Child Development
GPO Box 1152
Adelaide  SA  5001

Letters from solicitors should be redirected without delay. Letters of acknowledgement should merely indicate that the matter has been forwarded to the Department’s Legal Services Directorate for attention.

4.3. Additional action to be taken in the event of an accident to a student

In addition to all relevant DECD processes and procedures for the dealing with and reporting of incident/accidents involving student’s statements should be obtained by the Principal as soon as possible. In cases of a serious accident or an illness affecting a child or student in a school or preschool, the principal or director should:

- manage the situation in accordance with First aid and health emergency management; and
- contact the parents or guardians of the student as soon as possible.
- call for ambulance assistance as a priority.

In the event that an injury results in damage to a student’s teeth, immediate attention by a dentist may prevent permanent damage. Principals/Directors should ensure that such attention is given as soon as possible.

Where an accident involves a school bus, principals should refer to DECS Transport Policy.

If the supervising teacher believes that, as a result of accident or an illness, the condition of the child or student is sufficiently serious to warrant attendance by an ambulance, an ambulance must be called.

More information about Ambulance Claims is available on the Legal Services Directorate website at:

Severe Injuries

Where an accident or injury to an employee or student is of a severe nature, (such as in the examples below), additional statements should be obtained by the Principal as soon as possible. Additional statements include the Principal’s own comments, eye-witness reports and statement of the class teacher or teacher on duty. The Department’s Manager Claims will request further information if required. Injuries or accidents for which additional reports will be required are:

- head injuries (including cosmetic injuries)
- eye injuries
- back injuries
- loss of limbs or appendages (e.g. fingers, toes)
- bone fractures
- deep wounds requiring suturing
• muscular injuries (more serious ones)
• burns
• ear injuries
• other injuries where complications have set in after the initial injuries are sustained.

Such additional reports should include sketches, and photographs of the scene of the accident.

4.4. Occupiers Liability

Minister’s Liability

As an occupier of premises the Minister owes a duty of care to all persons who enter departmental property, and will be liable to compensate persons injured on the premises due to the dangerous state of the premises. This duty extends to persons who enter departmental property after, as well as during, school hours.

Trespassers

The Civil Liability Act provides that an occupier owes no duty of care to a trespasser unless the presence of the trespassers was reasonably foreseeable and the nature of the danger was such that measures should have been taken for their protection.

It should be noted that if school grounds are accessible it would be regarded as reasonably foreseeable that children will play there after hours. Therefore, measures need to be taken to protect such children from any danger on the premises.

5. ROLES AND RESPONSIBILITIES

<table>
<thead>
<tr>
<th>Role</th>
<th>Authority/Responsibility for</th>
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<tbody>
<tr>
<td>All DECD employees</td>
<td>Note that they have a duty of care obligation towards all persons in their care and control</td>
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<tr>
<td></td>
<td>Comply with all relevant government policies and procedures relating to the reporting of incidents and injuries</td>
</tr>
<tr>
<td></td>
<td>Seek advice or assistance when required</td>
</tr>
<tr>
<td>Manager, Claims</td>
<td>Monitor, evaluate and review this procedure every 3 years</td>
</tr>
<tr>
<td></td>
<td>Ensure that this procedure and its contents are compliant and up to date with relevant legislative and state government obligations</td>
</tr>
<tr>
<td></td>
<td>Advise on this procedure and its practical application to DECD employees</td>
</tr>
<tr>
<td>Director, Legal Services</td>
<td>Approve this procedure and its contents</td>
</tr>
<tr>
<td></td>
<td>Ensure that this procedure is monitored, evaluated and reviewed every 3 years</td>
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<tr>
<td></td>
<td>Ensure advice sought on this procedure is responded to in a timely manner</td>
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6. MONITORING, EVALUATION AND REVIEW
Review of this procedure will include the Director, Legal Services, and the Project Officer of the DECD Legal Services Directorate considering any amendments or updates of the documents listed below as supporting documents and the principal law on this matter and any other future relevant State Government and DECD policy/procedure on claims or injury management.

This procedure will be reviewed every 3 years.

7. DEFINITIONS AND ABBREVIATIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
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<tbody>
<tr>
<td>Breach of duty</td>
<td>A person is in breach of duty towards another if their conduct fell short of the standard expected under the circumstances.</td>
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<tr>
<td>Damages</td>
<td>Means compensation or damages for harm and includes solatium but does not include—</td>
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<tr>
<td></td>
<td>(a) workers compensation; or</td>
</tr>
<tr>
<td></td>
<td>(b) compensation under a statutory scheme for compensating victims of crime.</td>
</tr>
<tr>
<td>DECD</td>
<td>Department for Education and Child Development</td>
</tr>
<tr>
<td>Negligence</td>
<td>Means failure to exercise reasonable care and skill, and includes a breach of a tortious, contractual or statutory duty of care.</td>
</tr>
<tr>
<td>Negligence claims</td>
<td>A claim for damages or other money.</td>
</tr>
<tr>
<td>Occupier of premises</td>
<td>Means a person in occupation or control of the premises, and includes a landlord.</td>
</tr>
<tr>
<td>Reasonable care</td>
<td>The standard of care owed by those who have a duty to take care.</td>
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</tbody>
</table>

8. SUPPORTING DOCUMENTS

- DECD injury/incident Reporting and Investigation Procedure  
- Injury Management Policy  
- DECD Workplace Learning Guidelines 2004
- Guidelines for Ambulance Use and Claims

9. REFERENCES

- Civil Liability Act 1936