



Oblate Youth Australia

DUTY OF CARE POLICY

(August, 2020)

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1. CONTEXT

Oblate Youth Australia (OYA), as an agency of the Missionary Oblates of Mary Immaculate Province of Australia, owes a duty to take reasonable care for the safety and welfare of all participating in OYA activities, with a particular focus on prioritising the safeguarding of children and vulnerable adults. The duty is to take such measures as are reasonable in all the circumstances to protect participants from risks of harm that reasonably ought to be foreseen. This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be taken.

In discharging their duty of care responsibilities, OYA staff and volunteers must exercise their professional judgment to achieve a balance between ensuring that participants do not face an unreasonable risk of harm and encouraging participants independence and maximising growth opportunities.

2. OBJECTIVE

‘Duty of care’ is a legal concept that has its origins in the common law. The common law is a collection of legal principles that have been established over time by the courts. The duty of care principle not only underpins, but to a large extent drives, most OYA policies and practices. This policy attempts to explain, in plain English, what “duty of care” means and how OYA staff and volunteers may discharge their duty of care to participants.

3. DEFINITIONS

Caring or Personal Caring

For participants, caring or personal caring may assume different meanings depending on the context. Examples include (but are by no means limited to): not putting participants at risk by doing something or failing to do something that could cause the participants to suffer injury or harm, taking precautions, intervening to prevent obvious hazards from causing injury or harm, following safety procedures and providing adequate instructions to Participants.

Duty of Care

Duty of care means a duty imposed by the law to take care to minimise the risk of harm to another.

External Provider

An external provider is a business or individual paid by OYA to provide a venue, service and/or expertise appropriate to a particular OYA activity.

OYA Activity

An activity that is organised or managed by a member of the staff or volunteer and is publicly announced or understood and hosted by OYA.

Participant

This is a person who is involved in an OYA activity but is not a staff or a volunteer taking up a role of leadership.

Volunteer

A volunteer is an adult or organisation who/which offers services for OYA Activities, but receives no remuneration from the OYA for the services provided.

4. PROCEDURES

4.1 Reasonable Care

What constitutes ‘reasonable care’ will vary according to the circumstances, but the following factors, although not necessarily exhaustive, must be taken into consideration in assessing the ‘reasonableness’ of the level of care required for a particular participant:

- The participant’s age, experience and capabilities;

- Physical and intellectual impairment;
- Medical condition;
- Behavioural characteristics;
- The nature of the OYA Activity;
- The nature of the environment in which a OYA activity is to be undertaken;
- Any conflicting responsibilities that the staff/volunteer may have; and
- Normal practices within OYA Policies and Procedures.

When assessing the risk involved in an OYA activity, consideration must be given to the following factors:

- The probability of the risk occurring;
- The magnitude of the risk; and
- The expense, difficulty and inconvenience involved in alleviating the risk.

When deciding whether a member of an External Provider might personally care for Participants (without a member of the OYA Staff/Volunteer also being present), OYA staff/volunteers must satisfy themselves that the person is suitable for the task being assigned.

When making this assessment, OYA staff/volunteer must consider factors such as the:

- Number of participants involved;
- Age, experience, capabilities and behaviour of the Participants;
- Nature of the environment, premises and of the activity to be undertaken; and
- Age, ability, experience and general suitability of the proposed carer.

5. LIABILITY

5.1 General

Liability in negligence may arise if an injured participant can establish, on the balance of probabilities, that:

- a. At the time his or her injury was sustained, the person who was responsible for his or her safety owed the participant a duty of care.
- b. The person who was responsible for the participants safety breached the duty of care by failing to exercise reasonable care for the safety and welfare of the participant.
- c. As a result of the breach, the participant suffered an injury which was reasonably foreseeable.