

Procedure

Insurance and Claims Management in relation to Children, Students or Visitors on departmental premises or participating in departmental activities

Please note this procedure is mandatory and staff are required to adhere to the content

Summary

This procedure is to advise staff of the insurance and claims management matters relating to incidents to children, students or visitors on departmental premises or participating in departmental activities.

Table 1 - Document details

Publication date	30 August 2017
File number	14/14758
Related legislation	<i>Civil Liability Act 1936</i>
Related policies, procedures, guidelines, standards, frameworks	DECD injury/incident Reporting and Investigation Procedure Work Health and Safety and Injury Management Policy DECD Workplace Learning Guidelines Guidelines for Ambulance Use and Claims DECD First aid management for site leaders DECD Duty of Care Policy DECD Information Management Policy
Version	2
Replaces	Accidents to Children, Students or Visitors – May 2011
Policy officer (position)	Claims Manager
Policy officer (phone)	8226 1822
Policy sponsor (position)	Director, Legal Services
Executive director responsible (position and office)	Deputy Chief Executive, Corporate Services
Applies to	All DECD staff

Key words	Accident, incident, injury, claim, insurance
Status	Final draft
Approved by	
Approval date	17 August 2017
Review date	17 August 2020

Table 2 - Revision record

Date	Version	Revision description
31 March 2015	1.1	Minor edit – incorporation into new DECD template
2 November 2015	1.2	Major edit – draft for consultation
16 November 2015	1.3	Incorporation of SAICORP feedback
19 November 2015	1.4	Incorporation of HSS feedback
24 November 2015	1.5	Transferred to new template and incorporation of Office of the Deputy Chief Executive feedback
26 November 2015	1.6	Incorporation of FSA feedback
25 January 2016	1.7	Incorporation of PPP feedback
29 January 2016	1.8	Incorporation of HSS feedback
5 February 2016	1.9	Incorporation of CPU feedback
15 February 2016	1.10	Incorporation of DCE feedback
19 February 2016	1.11	Consultation draft for FSA
15 December 2016	1.12	LSD further draft
22 June 2017	1.13	LSD further draft
28 June 2017	2	Final draft

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1. Title

Insurance and Claims Management in relation to Children, Students or Visitors on Departmental Premises or Participating in Departmental Activities Procedure

2. Purpose

This procedure provides advice to Department for Education and Child Development (DECD) staff about how to manage insurance and claims matters relating to incidents and injuries that occur on departmental premises or during departmental activities that occur outside of departmental premises involving children, students or visitors. This procedure is to ensure staff are aware of and comply with the DECD insurance and claims management process.

3. Scope

This procedure applies to any DECD employee who becomes aware of, or is faced with responding to, insurance or claims matters relating to an incident involving children, students or a visitor.

This procedure does not apply to insurance or claims matters relating to an incident involving a DECD staff member. DECD staff should refer to the [Work Health Safety and Injury Management Policy](#) for assistance.

4. Policy detail

4.1 Ambulance claims

When determining to seek emergency assistance (ambulance) for children and students, staff should refer to the DECD [Health Support Planning Guidelines](#), specifically clause 3.3 'Seeking emergency assistance'. However, it should be noted that the issue of costs must not be considered as a factor by site staff in determining whether an ambulance should be called because the department agrees to meet such costs for students who do not have private ambulance cover.

Meeting ambulance costs is primarily the responsibility of the individual or their caregiver. Those that have private ambulance cover should recoup costs from that source.

Where a student or volunteer does not have private cover, a request for payment can be made through the DECD Legal Services Directorate in accordance with the following process:

- the school will supply a [DECD Statutory Declaration - Claim for Ambulance Service Fees](#) to the parent or carer
- the parent or carer completes the declaration in full
- the ambulance account and completed statutory declaration form are presented to the preschool or school by the parent or carer
- the Director or Principal signs the bottom of the statutory declaration
- a copy of the ED155 Accident or Incident report is collected by the Director or Principal.

- All items are forwarded to the claims mailbox at DECD.legalclaims@sa.gov.au or via the DECD courier system to: Claims Manager Legal Services Directorate, R11/13.

Visitors to DECD sites are responsible for meeting their own ambulance costs.

Where an incident or injury occurs involving a child or young person receiving services from a third party provider on premises owned by the Minister/DECD, those third party providers are required to report such matters pursuant to the terms of their formal contractual arrangement with the Minister. Further information may be found in the [DECD Managing External Contractors Procedure](#).

Where an incident or injury is of a severe nature, counselling should be offered to departmental staff affected by the accident/incident. Further information may be found on the DECD intranet regarding the [Employee Assistance Program](#).

4.2 General insurance and claims management principles

The Department for Education and Child Development does not provide accidental injury insurance for children, students or visitors to departmental sites or participating in departmental activities, with the exception of insurance provisions for bona fide volunteers and for students on approved work experience placements off site.

However, claims for expenses may be met if, on the basis of legal opinion, the injury is attributable to negligence on the part of the department, including the Minister for Education and Child Development and his/her staff or agents, under the department's public liability insurance cover.

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, a child has until they are 21 years of age to commence legal proceedings for an injury (or up to 30 years from the date of the injury for a brain/neurological injury).

Changes to the law from 2004 affect incidents that have occurred after 1 May 2004 in 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 obtaining compensation but it may reduce the amount of compensation paid including payment of their legal costs.

Parents should also be encouraged to insure their children against accidental injury.

Injuries to employees require special reporting procedures. Information relating to [worker's compensation and those claims management processes](#) can be found on the DECD intranet.

Insurance cover for students involved in work experience/placements is dealt with in the [DECD Workplace Learning Guidelines](#).

Information regarding injury incident reporting requirements can be found in the [DECD Incident Reporting and Investigation Procedure](#).

Information regarding the incident reporting requirements involving departmentally owned buses can be found in the [DECD School Transport Policy](#).

4.3 Education Site Claims lodgement/process

If a claim against the department arises, it must be made in writing. The parents/guardians can do this on behalf of their child if he/she is under 18 years of age. Documentary evidence of expenses incurred should also accompany any claim.

Liability must not be admitted by the department. Notwithstanding that, an apology may be given to the child and/or their parents if appropriate in the circumstances. Section 75 of the *Civil Liability Act 1936* states that such an apology “does not constitute an express or implied admission of fault or liability by the person in connection with that matter” and “is not relevant to the determination of fault or liability in connection with that matter.”

No offer to the claimant is to be made to pay compensation or damages. The claimant should be advised that the matter will be referred to the Legal Services Directorate to investigate the incident further before any decision is made regarding compensation.

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 any departmental work sites.

All claims (excluding Workcover) should be directed to the claims mailbox at DECD.legalclaims@sa.gov.au or can be posted to the following address:

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

Letters from solicitors regarding claims received by any department site or service should be redirected to the Legal Services Directorate without delay.

If the site leader intends to forward a letter of acknowledgement, this letter should only indicate that the matter has been forwarded to the department’s Legal Services Directorate for attention and investigation, and a copy of this or any other correspondence relating to the incident should be provided to the Legal Services Directorate.

Additional factual statements should be obtained by the site leader for matters involving severe injuries as soon as possible after the incident, and may include the site leader’s own comments, eye-witness reports from employees, and statements of the class teacher or teacher on duty. Additional reports such as sketches and photographs of the scene of the incident should also be obtained where applicable.

The department’s Claims Manager will request further information if required.

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 during, and out of school hours.

Trespassers

The Civil Liability Act 1936 provides that an occupier owes no duty of care to a trespasser unless the presence of the trespasser 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 2 - Roles and responsibilities

Role	Authority/responsibility for
All department (DECD) employees	Note that each employee has a duty of care obligation towards all persons in their care and control and to visitors to the premises. Comply with all relevant government policies and procedures relating to the reporting of incidents and injuries. Seek advice or assistance when required.
Claims Manager	Monitor, evaluate and review this procedure every 3 years. Ensure that this procedure and its contents are compliant and up to date with relevant legislative and state government obligations. Advise on this procedure and its practical application to DECD employees.
Director, Legal Services	Approve this procedure and its contents. Ensure that this procedure is monitored, evaluated and reviewed every 3 years. Ensure advice sought on this procedure is responded to in a timely manner.

6. Monitoring, evaluation and review

Review of this procedure will include the Director, Legal Services, and the Manager, Policy and Strategy, 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 3 - Definitions and abbreviations

Term	Meaning
Breach of duty	A person is in breach of their duty of care towards another if their conduct fell short of the standard expected under the circumstances.
Damages	Means compensation or damages for harm and includes psychological/emotional injury but does not include— (a) workers compensation; or (b) compensation under a statutory scheme for compensating victims of crime.
DECD	Department for Education and Child Development
Departmental activities	Activities include but are not limited to: <ul style="list-style-type: none"> • Camps • Excursions • Site organised and managed sporting events • Site organised and managed social or fundraising events • Site participation in events organized and managed by other organisations.
Departmental premises	Premises include: <ul style="list-style-type: none"> • Education Centre (Corporate Office) • DECD Regional Offices • DECD school and preschool sites • FSA Regional Offices • Any other premises owned by the Minister
Incident	An occurrence or event that has caused or could cause harm including injury, illness, hazard and property damage.
Minister	Minister for Education and Child Development
Negligence	Means failure to exercise reasonable care and skill, and includes a breach of a tortious, contractual or statutory duty of care.
Negligence claims	A claim for damages or other money.

Term	Meaning
Occupier of premises	Means a person in occupation or control of the premises, and includes a landlord.
Reasonable care	The standard of care owed by those who have a duty to take care.
Severe injuries	<p>Include, but are not limited to:</p> <ul style="list-style-type: none"> • 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.
Site leader	Principal, Director or their delegate
Visitor	Any person other than DECD staff or students including, but not limited to: parents/caregivers of students, other family members and relatives of students, contractors or sub-contractors and their employees engaged to undertake work, members of the public using the premises outside of school hours.

8. Supporting documents

[DECD injury/incident Reporting and Investigation Procedure](#)

[Work Health and Safety and Injury Management Policy](#)

[DECD Workplace Learning Guidelines](#)

[DECD Occupational First Aid Procedure](#)

[DECD Health Support Planning Guidelines](#)

9. References

Civil Liability Act 1936