

The Excursion Management Problem - Balancing Legal Risk and Practical Realities

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ABSTRACT

Schools have a legal duty to take reasonable care to protect students, and court cases show that this duty can extend outside school premises and outside school hours. A school which breaches this duty by, for example, failing to provide adequate supervision during a camp, may be found negligent in failing to safely conduct an excursion.

What 'reasonable care' means in practice is not always clear and can only be determined by a court. Laws generally only tell schools what not to do in specific scenarios, rather than what they should do to protect students. This process is generally retrospective rather than pre-emptive and changes in state and territory standards, or in school policies and procedures, are usually brought about by unfortunate and often preventable accidents and events that result in legal actions and public scrutiny.

With the law in a state of regular flux, Education Departments around Australia have attempted to establish excursion care thresholds through issuing guidelines. But, in reality, these documents are lengthy, inaccessible and often contradict each other. Examples sourced from around the country show very detailed documents, some in excess of 100 pages, that are simply too cumbersome and convoluted to be valuable - especially to teachers who have limited time to read and digest tomes, before beginning to plan an excursion, camp or tour. Therefore, without clear guidance, teachers tend to rely on a 'common-sense' approach to student safety. However, without extensive record keeping, this approach is likely to be insufficient before a court.

The safest approach for schools is to have a structured and documented online planning process, assess all reasonably foreseeable excursion risks and conduct due diligence on vendors used. But schools are often unaware of the extent of their legal obligations or how best to implement them and they rarely employ staff who are risk experts. Additionally, planning an excursion is costly and time-consuming, even without all the bureaucratic red tape.

This paper addresses the challenges faced by schools in balancing legal obligations with the practical complexities of conducting a 'safe' excursion.

It argues that solving the excursion management problem involves:

- standardising the creation, planning and implementation of an excursion;
- ensuring that activities are properly documented and archived;
- developing a healthy risk appetite; and
- adopting a due diligence approach to vendor selection.

By taking these steps, schools can minimise their potential liability and cut bureaucratic red tape, enabling them to focus more on their core educational purpose and student duty of care obligations.

KEYWORDS

Excursion, Duty of Care, Due Diligence, Risk

1 WHY IS THERE A NEED FOR CHANGE?

1.1 The Background

The student duty of care obligation is a commitment for schools and teachers to not act negligently. Schools and teachers have a duty to exercise 'reasonable care' to protect students from risks of harm that are 'reasonably foreseeable'. The legal standard of care expected of schools and teachers is to act as a reasonable school or reasonable teacher would act. The standard of care required of schools and teachers is higher than would be expected of parents. A duty of care situation arises out of the formation or development of a relationship between a student and the school and it is a concept that is well-established in education regulations and common law. "In general, a schoolmaster owes to each of his pupils whilst under his control and supervision a duty to take reasonable care for the safety of the pupil. It is not, of course, a duty of insurance against harm but a duty to take reasonable care to avoid harm being suffered." (Richards v. State of Victoria (1969) VR 136 at 138)

It can be argued that a teacher's duty of care, although not an absolute duty, is non-delegable. Therefore, a school cannot completely discharge its duty whilst students are on a camp, tour or excursion or by placing the students in the control of an external provider. This does not mean that a school should not allow its students to participate in camps, tours or excursions operated by others. Instead schools must be vigilant to ensure that external providers with whom it deals are safe and competent. In addition, it also does not mean that schools should forbid staff from taking children on camps, tours or excursions where there are some manageable risks.

According to Dr Andrew Brookes in his paper, 'Research update: Outdoor education fatalities in Australia' (2014), "These often-harrowing accounts serve to emphasise that however unnecessary or 'over the top' fatality prevention may seem prior to a tragedy, in the aftermath of a tragedy what matters to those affected is whether the possibility of death could be foreseen and whether it could have been prevented ... There is no reason for outdoor education not to aspire to be the safest part of a school's overall program." (Brookes (2007) p.9)

In order to determine the extent of a school's duty of care, schools must first determine the purpose of the excursion, camp or tour and then determine the risks. Camps, tours and excursions should be planned around the school's ethos, with specific teaching and learning outcomes. Risky activities need not be avoided, provided that proper precautions and safety measures are implemented. It is undisputed that schools owe their students a duty of care, it is also undisputed that taking calculated risks is an essential part of life and thus an essential part of learning. So why do we seem to be constantly reading reports of schools curtailing seemingly innocuous activities in the name of safety? The reality is that the primary driver in the decision-making process probably isn't safety at all, but rather a fear of being sued.

1.2 Teacher Influences Regarding Excursion, Camp and Tour Planning

There are many factors that can influence teachers as to whether or not they choose to take students on a camp, tour or excursion. However, any activity that takes students off the campus of the school, including simply crossing a public road to access an oval, can be defined as an excursion.

The release of the Final Report from the Review of the Australian Curriculum (the Report) in 2014 revealed many findings, including the worrying trend that excursions are being 'dumped' by teachers too frightened to take their students outside of school grounds because of the threat of being sued (Donnelly and Whitleshire (2014) p.105 & 148). Some of the factors raised by teachers included:

- concern for the safety of their students;
- wanting students to derive some meaning from their excursions;
- taking into account the interests of their students when planning an excursion;

- not generally wanting to construct activities to occupy every waking minute of the student's time;
- running a camp, tour or excursion can be very stressful;
- excursion administration and litigation fears;
- planning a camp/tour or excursion can be very time consuming - often involving many after-work hours; and
- teachers were wanting to use external providers' material to enhance the learning for students.

The Report's assessment of certain subjects such as health and physical education, included references to teacher feedback regarding the use of excursions as part of teaching content outside the classroom. This feedback indicated that many teachers felt burdened by excessive administration requirements and were worried about potential legal liabilities if things went wrong.

Education commentator Kevin Donnelly warned that the overcrowded nature of the curriculum and the mountains of red tape required to take children on excursions meant children were increasingly desk-bound. "Certainly, with schools, there is a concern that there is so much paperwork and bureaucracy in terms of getting approval for extra-curricular and co-curricular activities," Dr Donnelly said. He said, "There is a very real danger and concern about litigation from parents - parents who have every right to be involved in their child's education - but we do tend to wrap our kids in cotton wool." However, what is also apparent is that 'school excursions, camps and tours are generally enjoyable activities that can provide a welcome break from a school's normal routine for students and their teachers' (Ritchie, Brent W and Coughlan, Duane (2004)). Whilst they might be fun for those involved, school camps, tours and outside activities are becoming recognised as a key risk for schools. A School Governance survey conducted in 2014 ranked school excursions among the top ten risks for schools.

Across the Tasman, the New Zealand Herald reported in 2016 that new health and safety regulations may be having a chilling effect on school activities such as camps, as schools are wary of possible fines if they fail to meet the increased legal obligations. There are reports that school boards and principals are concerned about the large fines and possible jail sentences that are associated with serious breaches and are revising their activity schedules due to these concerns and the increased costs associated with hiring qualified supervisors or training staff. Although the New Zealand Government argued that out-of-school activities should be unaffected by the changes, many schools are choosing to be over-cautious and have commissioned full audits of their current policies.

A summary of possible excursion constraints for schools and teachers was proposed in this figure by Ritchie and Coughlan (2004).

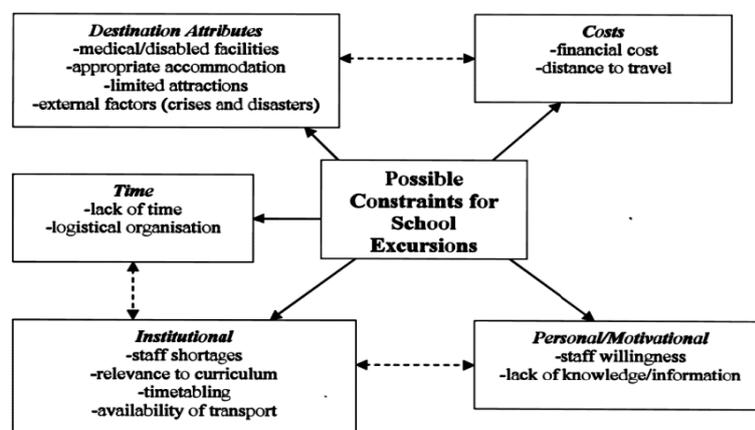


Figure 1: Possible constraints for school excursions

Sadly, as illustrated through high-profile tragedies as noted by Brookes, the fear that things can go wrong on excursions (which is not noted in the figure above) is real - especially where schools do not

take appropriate steps to identify risks and manage them appropriately. Nevertheless, a school and its teachers still have a duty of care to take reasonable steps to protect students from injury on excursions. Even with the consent of parents, schools need to ensure that they address all of the foreseeable risks on a school trip.

Is there a need for change? **Clearly yes.**

Over the years, there have been many changes in schools regarding the planning, preparation and the carrying out of duties whilst participating in camps, tours and excursions. Above all, there have been massive paradigm shifts associated with the expectations of, and increased due diligence placed on, schools to maintain a satisfactory level of care for students.

In addition, parents (and the community in general) also have higher expectations of the level of supervision and care expected of their children by the school and schools have also assumed that children require a greater level of planned and carefully monitored activities when on scheduled out-of-school activities. There is also a clearer understanding of risks and how to mitigate risks - particularly relating to the potential injury or death of a child or the lesser risks of financial or reputational loss. Teachers know the value in real life learning and the enjoyment that just getting out of the classroom brings to students and, if they are truthful, the teachers too. The issue is, how can schools encourage teachers to continue to organise and execute well-planned and **successful** out-of-class learning experiences whilst keeping the burden of 'paperwork' down to a reasonable level?

2 HOW CAN SCHOOLS BETTER MANAGE EXCURSION PLANNING AT A MACRO AND MICRO LEVEL?

2.1 The Identification of Macro Risks

So how can schools make this process less daunting, yet still thorough, and encourage their teachers to continue to engage their students in valid, meaningful out-of-the-classroom activities?

Firstly, schools need to develop a policy and a set of procedures that must be followed to help them manage the various risks associated with regular off-campus activities, day trips, overnight excursions and international/interstate trips. The policy should outline a set of general principles to direct the planning of excursions to minimise the risks, such as the requirement of a management plan to be completed and approved beforehand. The management plan should identify the risks posed by the particular excursion and outline the strategies to mitigate each of the risks. Final approval of an excursion should only be granted by the principal if they are satisfied that the risks have been appropriately identified and addressed in the management plan.

Some of the **overarching** or **macro** questions that should be asked by schools and excursion leaders when developing a management plan for a camp, tour or excursion could be:

1. What is the purpose of the camp/tour/excursion and is it in keeping with the school ethos and expected learning outcomes?
2. Has there been a recent visit to the site to assess if it is suitable for the students concerned? If it is a regular venue, have there been any changes since it was last used by the school?
3. Has a risk assessment been completed to clearly identify each aspect of the excursion and has there been an overall risk assessment completed?
4. Has each risk been clearly identified and mitigated by suitable strategies and procedures?
5. Have the activities with risks that are deemed to be too high or unable to be reduced been omitted from the program?
6. Will the school insurance cover every detail of this camp/tour/excursion?
7. If using an external provider, does the provider have sufficient public liability insurance?

8. Has the school conducted a due diligence process with all external providers involved in the excursion to ensure their competence and compliance with Child Protection and WHS/OHS/OSH regulations?

Teachers today are very aware that they are personally accountable for, and they have a specific and non-delegable duty of care toward, their students. They also know that some learning activities carry a certain amount of risk and that carefully planned lessons that incorporate risk mitigation strategies, ensure that risks are minimised and the focus can be on learning. Knowing this, many organisations that regularly have school groups that attend their facilities provide educational materials, planners and guidelines for schools/teachers so that the planning of the event is more effective, efficient and the students can gain the most from their experiences. This does not absolve the school from conducting a formal due diligence process with the vendor nor abrogate the responsibility of the teachers or the school of their duty of care toward students.

All schools are required to undertake extensive planning for excursions including the documentation of risk assessments with respect to each aspect of the excursion. These include risks associated with the use of an external vendor - as noted previously, a due diligence should be carried out for each vendor regardless of their own risk assessments and documentation. Other risks include, but are not exclusive to: transport, venue related risks, accommodation, student abilities and medical conditions. Once the risks have been identified, teachers then need to implement more detailed or granular risk mitigation strategies including those relating to supervision, communication and critical incident response procedures. The reality is that there is a necessity to balance the need to achieve educational outcomes and the overall duty of care for students.

2.2 The Identification of Micro Risks

Further steps a teacher should take in developing an excursion management plan include responses to micro (granular) risks. These micro risks can be broken up into three main groups:

1. Supervision – who oversees the camp, tour, or excursion? What is the teacher/student ratio? Are the supervisors appropriately trained?
2. Legal and Regulatory – Working with Children Checks (or equivalent) for supervisors, volunteers, contractors and external providers; up-to-date medical details for students and supervisors; parental; appropriate records; appropriate due diligence checks; a risk assessment has been conducted or not.
3. Logistical – external variables such as weather and time of year; putting suitable communication strategies in place; transport, accommodation, meal, sickness and misadventure arrangements; ensuring suitability of accommodation arrangements, especially for special needs students; consulting with staff, parents, students and external providers regarding nature and potential hazards of the excursion.

In addition, the management of excursions should include debriefings following school trips, where staff can outline areas of risks not previously considered which may be factored into future management plans. Schools should keep records from each school trip, from the management plan; names and contacts of students, staff and teachers in charge; contracts entered into with any third-party organisations; risk assessments and records of any incidents that may have occurred on an excursion.

Many schools are aware of the extensive list of questions that should be answered by staff when they plan and conduct off-campus activities. The examples given in this paper cannot be considered to cover all aspects of every activity because the requirements for each school can vary considerably. However, regardless of the types of and amount of information required, these matters are often addressed by the schools through the provision of detailed policies and procedures with

accompanying application and approval forms. The policies, procedures and application forms have grown in both content and volume over the last 30 years or so, as schools develop better understandings of their responsibility for the duty of care of the children and their understanding of, and response to, risk analysis and mitigation.

Unfortunately, although the understanding of the expected requirements and resulting complexities of off-campus activity planning has developed over time, many schools and larger systemic educational organisations have remained with hard-copy paper or simple one-off, online application forms and the policies and procedures and risk assessments that may be associated with off-campus activities are not easily linked to the documents. Thus, making the process cumbersome, unwieldy and open to human error.

3 SO, WHAT DO THE EDUCATION DEPARTMENTS SAY?

Each state or territory produces its own policies or guidelines about excursions, camps and tours. With the exception of some systemic non-government schools, most non-government schools develop their own policies regarding these activities. However, many schools base their policies on the policies and procedures developed by the government school body that operates within their state or territory. Hence, it is these policies that have been identified within this paper. They are representative of each specific state or territory and they are also aligned with relevant legislation of each jurisdiction.

3.1 The Australian Capital Territory

The ACT Government Education and Training Excursions Policy (ACT Policy) was published in 2006 and commences with the following: "Educational excursions should provide enriching experiences for students in a variety of environments." A first comment is that the year of publication of this Policy was 2006. There may have been revisions and additions but they are not apparent within this document. Although this is a relatively brief document, it has nine separate attachments, including a Risk Assessment Proforma and ten other associated policies. Clause 4.2 of the policy states: "It is the responsibility of the teacher in charge to know and to comply with the requirements of related and relevant policies." This makes the planning and execution of an excursion a far more onerous task for the teacher.

Excursions are categorised as either:

- A. Movement, generally on foot or by bicycle in the vicinity of the school or a variation to normal activity;
- B. Excursions other than Category A within the ACT;
- C. Excursions which involve day travel beyond the ACT; or
- D. Excursions which include overnight accommodation regardless of the distance from the school.

Overseas excursions and student exchange programs, work experience and vocational placements are not covered by the ACT Policy. Within the ACT Policy, they also note that a Risk Assessment Proforma is a mandated requirement only for Category C and D excursions. For Category A and B Excursions, the proforma is only recommended. Does this mean that if a teacher wants to take a class abseiling or horse-riding, for example, within the ACT that no Risk Assessment is compulsory?

Child Protection is raised primarily in relation to volunteers on excursions and the onus once again falls on the teacher "to ensure that all accompanying adults are appropriately screened, qualified and/or experienced and are advised of their responsibilities and relevant Directorate and school policies and safety procedures."

3.2 New South Wales

In NSW, the NSW Department of Education Excursions Policy (NSW Policy) was implemented in 2009 and updated in March 2016. Although unpaginated, it has six sections with clear dot points in each section. The policy begins with: “School excursions are structured learning experiences provided by, or under the auspices of, the school which are conducted external to the school site. They can pose risks. The policy and procedures are directed at managing such risks.”

The NSW Policy includes a 23-page Implementation Procedures document which notes that: “A risk assessment must be carried out for an excursion before permission is sought. The risk assessment must identify and assess risks that the excursion may pose to the safety, health or wellbeing of any child being taken on the excursion, and detail strategies for minimising those risks.” Section 6 of the document deals with Child Protection and it identifies that all staff have a responsibility to report risk of harm concerns about children and young people. In addition, the principal or delegate is responsible for all Working with Children Check procedures for all staff, vendors, contractors and volunteers. Section 7 deals with Risk Management and the Department expects that, “a risk assessment is to be conducted and a risk management plan developed before approval can be given for any excursion.”

Delegations for excursion approval, risk management, child protection and the excursion planning process, amongst many other processes, are covered within the Implementation Procedures document.

3.3 The Northern Territory

The Department of Education NT has four links to documents on their website under the title of Excursions. There is an Excursions Policy, Excursions Guidelines, Consent Form and Risk Management Plan. In a manner, similar to the ACT document, the NT Excursion Policy categorises excursions as:

- A. Local area excursions and regular outings;
- B. Beyond local area excursions;
- C. Interstate excursions; and
- D. International excursions.

Principals may only approve Category A or B activities. Category C requires final approval by the Chief Executive and Category D final approval by the Minister for Education. This is similar to the process in NSW. One would imagine that teachers who wish to take students on any Category C or D type of activity must plan well in advance in order to receive the necessary approvals for their request. Although the NT Excursion Policy is downloaded as a Word or PDF document it has ten online links to attachments and a further ten links to the relevant Acts, other NT policies and information sheets and forms. Surprisingly, there is also a link to the NTPS Teacher and Educator 2014-2017 Enterprise Agreement. There may be some advantage in having a downloadable policy and guideline document, however, there is also the very real risk that older, out-of-date documents could still be inadvertently used by teachers who may not have checked for the most recent versions online.

The Excursions Guidelines provide a step-by-step process for principals and teachers and a level of detail not apparent within the policy. The Risk Management Plan, similar to the document from Queensland below, explains the Risk process in clear terms and gives teachers a structure upon which to identify and then plan to mitigate and reduce excursion risks to acceptable levels.

3.4 Queensland

The Queensland School Excursions and International School Study Tours Policy (QLD Policy) was implemented in September 2016. It is an online web page with six sections, six associated other policies and four attachments. There are numerous other links within the text of the document that

lead to other department policies and procedures. The QLD Policy opens with the following statement: “School excursions and International School Study Tours (SSTs) enhance students’ learning by providing the opportunities for students to participate in curriculum-related activities outside the normal school routine. School excursions are well-planned curriculum-related activities that aim to maximise students’ learning experiences.”

The QLD Policy attachments include an excursion planner template (with a section for risk mitigation), parental permission form, transport permission form and a private transport permission form. The excursion planner template is an online document with web links to some of the other required policies such as Managing Risks in School Curriculum Activities. There is also a clear delineation of responsibilities between the principal and the organising or lead teacher. The responsibilities are then broken down into more practical applications in the Process Section. There is a link to the Blue Card (Working with Children) requirements that must be observed by the principal and separate links for both the organiser and the approver regarding risk mitigation and child protection via the Student Protection Policy.

There are separate Curriculum Activity Risk Assessment Templates that are required to be used depending upon the level of risk as determined within the Managing Risks in School Curriculum Activities template. The templates are well constructed, easy to follow and they do not look too daunting.

3.5 South Australia

The Department for Education and Child Development SA (DECD) Camps and Excursions Guidelines for Schools (SA Guidelines) “provide a structure for planning the safe conduct of activities.” (DECD, 2016 p.1) Like many other states and territories, this document was updated in 2016, however it is a set of guidelines and not a formal policy. It is a 140-page document, downloadable in PDF format and it is noted as being ‘currently under review’. There are a further three policies, one set of procedures and one set of guidelines that are associated with these guidelines. In addition, there is a requirement for the document to be used in conjunction with three other DECD publications and there are three appendices, including a checklist for teachers, found on page 137 of the document.

In addition to these documents there are a further five forms that can be downloaded for use, including an application form for an excursion. Of note, although the SA Guidelines require that teachers ascertain if “the degree of inherent risk manageable?” this particular form does not require that any risk analysis or mitigation to be conducted or noted. However, the SA Guidelines provide yet another link - this time to a national regulator website.

The document provides information for teachers that will assist them to answer most of the macro and micro off-campus planning questions. It also goes on to list a wide variety of possible activities, the staffing ratio, safety and supervision, equipment and preparation and so forth.

3.6 Tasmania

The Tasmanian Department of Education provides the Procedures for Planning and Implementing Off Campus Activities (Tasmanian Procedures) last updated in February 2016. This 81-page document also includes three appendices and a further 18 associated documents that are referenced throughout these procedures. Unlike many other states and territories, this document is a set of procedures and not a formal policy. The opening sentence of the Tasmanian Procedures states, “These procedures for off campus activities are designed as a best practice guide to people in schools and colleges.” The document also identifies two broad types of excursions (minor and major) and specifically bans four types of activities in all Tasmanian government schools where the ‘maximum level of supervision and safety’ cannot be guaranteed.

Section 2.2 clearly identifies the responsibilities of the people associated with the planning, approval and conducting of an excursion ranging from the school principal, the teacher in charge, other teachers and support staff. Of note is section 2.5 - Risk Management, where it is noted that “appropriate risk management processes must be in place for all off campus activities. The nature of the management processes required is determined by the nature of the particular activities in which students are engaged.”

However, the referenced risk management document is not available for general access. In addition, with regard to external providers, there is a requirement that “Principals must undertake due diligence and complete risk management plans regardless of the fact that parents have signed waivers.” The bulk of the remainder of the Tasmanian Procedures, like SA, lists a wide variety of possible activities, the staffing ratio requirements, safety and supervision, equipment and preparation.

3.7 Victoria

The Victorian State Government Department of Education and Training (VDET) produce an Excursions and Activities Policy updated in April 2017 (VDET Policy), that, unlike all other states and territories, implies that it applies to not only government schools, but also to non-government schools, including all Catholic schools. However, as these last two links are inaccessible via public access, no further detail can be provided regarding the specific requirements of the VDET. This web page has links to eight other relevant policies and there are eight subsections or child pages, associated with this master page. The VDET Policy statement is, “Principals are responsible for the conduct of all excursions and must ensure:

- excursions are planned, approved and conducted in accordance with Department policy and requirements;
- an online notification of school activity form is completed at least three weeks prior to the activity using the Student Activity Locator; and
- compliance with the Safety Guidelines for Education Outdoors, which are mandatory for excursions requiring school council approval.”

Like Tasmania, the VDET has also listed four activities that may not be conducted by schools. These are not necessarily the same as the ones listed for Tasmania. There is a detailed section that requires that a risk assessment of all excursions must be taken. It goes on to explain that an excursion risk assessment plan must be provided which includes consideration of risks across the entire excursion. There is no standard risk assessment pro-forma available for principals and teachers to use. There is, however, a link to a downloadable standard risk assessment register for Outdoor Education activities.

3.8 Western Australia

The Western Australian Department of Education Excursions Policy and Procedures (WA Policy) is downloadable from their website. This 44-page document was last updated in August 2016. The WA Policy statement is clear and succinct: “School excursions are undertaken to further students’ learning and social skills development outside their normal school environment,” and it is made clear that school principals are responsible for the implementation of the policy whilst compliance monitoring is allocated to line managers (Department of Education WA (2016), p 2). There are six legislative instruments noted as being associated with this WA Policy, eleven other related department policies and a further three sets of guidelines. None of these documents have live links where they are listed in a table at the commencement of this policy, however, there are some functional links to the other policies within the text relating to excursion procedures. It should also be noted that there are differing approval processes for the two types of government schools in WA; Independent Public Schools and Other Public Schools.

There are clear details regarding child protection matters and guidelines for most of the major issues associated with the preparation and conducting of an excursion. However, what stands out within this document is that there are no formal vendor due diligence forms, risk identification, assessment and mitigation strategies and proformas easily available for teaching staff.

4 THE LEGISLATIVE MINEFIELD AND WILDERNESS REGARDING SCHOOL EXCURSIONS

There are no federal or state/territory laws that specifically relate to the planning, development and conducting of any camp, tour or excursion in any Australian school. However, alongside federal obligations, each state or territory has several acts and regulations that are able to be invoked in the event that there may be a claim of negligence brought against a school with regard to a child on an off-campus activity. Sitting below these legislative requirements are local government by-laws and regulations, the requirements of the state or territory Registration Body and any systemic requirement for systemic schools. Of course, sitting alongside the plethora of jurisdictional documentation is the ever-present common law concept of duty of care and the state and territory civil liability laws.

These civil liability laws have had the effect of modifying the common law of negligence to provide additional statutory protections for organisations and individuals who are subject to negligence claims. These laws don't replace the common law but rather exist side by side with the common law that has been developed over time. In most jurisdictions, the civil liability laws provide that:

- it is not necessary to warn a person of an obvious risk (of course what is obvious will vary given the age and ability of a student);
- an organisation cannot be liable in negligence for harm suffered by a person as a result of an obvious risk arising from a dangerous recreational activity; and
- an organisation cannot be liable in negligence for harm suffered by a person where a risk warning (often a verbal safety briefing) has been given with respect to a non-compulsory recreational activity.

As the civil liability laws differ in each state and territory it is essential that schools understand how to manage their student duty of care obligations having regard to the laws that apply in their particular jurisdiction.

4.1 Federal and State/Territory Legislation

Schools are regulated by state and territory acts and regulations as well as federal ones such as the Privacy Act 1988 (Cth) (Privacy Act) or Work, Health and Safety Act 2011 (Cth) (WHS Act). However, not all states and territories have chosen to comply with all federal laws. Victoria and Western Australia are two states that have not moved under the umbrella of WHS Act. Each of these states has their own Occupational Health and Safety legislation and regulations and there has been no indication of formal harmonisation with federal legislation.

For example, all non-government schools in Western Australia are required to abide a detailed list of legislation as well as the relevant Standards within the Department of Education Services Registration Guidelines (2017), and, if they are a systemic school, any system wide policies and procedures that may apply. However, there is a level of commonality regarding legislation that has bearing upon schools and off-campus activities in all states and territories.

The following legislative instruments (or combinations of same) seems to be commonly listed in government school excursion policies:

- Education;
- Work Health and Safety;

- Early Learning or Pre-School requirements;
- Child Protection; and
- Disability.

The one piece of legislation that is missing from this list of common legislation is the Privacy Act. Most state and territory government schools are not required to abide by the terms and conditions of the Privacy Act. However, this is not the case for non-government schools. A requirement to abide by all 13 Australian Privacy Principles (APPs) applies to all non-government schools, unless they have a revenue of less than \$3 million and they do not provide a health service. Note that there may be some debate about what constitutes providing a health service in the context of a school which may have a school nurse or other health professional providing a service. The key to protecting data so that a breach does not arise is compliance with APP 11, which requires a school to take reasonable steps to protect the personal information it holds from misuse, interference and loss, as well as unauthorised access, modification or disclosure.

School camps/tours and excursions are generally activities that involve larger than usual numbers of staff, parents, volunteers and contractors. Therefore, it could be surmised that it is the personal information about students, staff and even volunteers that schools use on these types of activities that is most at risk of being inadvertently shared, misused, lost or inappropriately accessed or disclosed.

In addition to the legislation, and common to most of the state/territory policies, is the requirement for some type of formal enterprise risk management (ERM) process. If any school wishes to deliver on a child protection culture, especially regarding off campus activities, this would require the establishment and communication of a clear and comprehensive integrated governance, risk, compliance & policy management (GRC&P) framework within the school. Many regulators now require non-government schools to implement formal risk management programs with regard to child protection both on and off campus.

Teachers and principals simply cannot be expected to intimately know all the relevant legislation nor be able to ascertain which legislation applies in each particular situation. This is where having an external provider of up-to-date documentation that incorporates all local legislation and any legislative changes, immediately reduces the burden of compliance on both principals and teachers.

In summary, schools must be mindful of the specific requirements of all relevant federal, state or territory laws that may be invoked if there is a claim made against the school for failing to provide suitable duty of care during a camp, tour or excursion. They also need to know, understand and be compliant with registration standards within their state or territory.

4.2 Change Management

Schools recognise the need to develop practices that will enable them to better manage the risks associated with excursions and to invest in modern technologies to help reduce the largely paper-based compliance burden on teachers, who want to plan and take children on excursions, that has grown almost exponentially over the last 30 or so years. In addition, schools are also aware that planning an excursion is costly and time consuming, even without all the bureaucratic red tape.

Anecdotal evidence still points to teachers relying on a 'common-sense' approach to student safety whilst on excursions. There is no doubt that many almost automatically engage in child safe pedagogical practices. In fact, experienced teachers often do this without thinking about it. For example, they will count children onto and off a bus, they will never send children to a public toilet on their own, always in twos or threes and they will regularly check the toilets both before and during the excursion time. More often than not, they do all this without recording that they are identifying a risk and then putting mitigation practices in place. When teachers were asked if they practiced child-safe

strategies on excursions and if these strategies were documented, a common response has been "Yes, but it's in my head."

The safest approach for schools is to have a structured and documented online planning process where the lead teachers can assess all reasonably foreseeable excursion risks and conduct due diligence on vendors used. Therefore, solving the excursion management problem involves:

- standardising the creation, planning and implementation of an excursion;
- ensuring that activities are properly documented and archived;
- developing a healthy risk appetite; and
- adopting a due diligence approach to vendor selection.

By taking these steps, schools can minimise their potential liability and cut bureaucratic red tape, enabling them to focus more on their core educational purpose and student duty of care obligations.

4.3 Standardising the Creation, Planning and Implementation of an Excursion

It is apparent just by reviewing the state and territory Education Department policies, that the procedures for creating, planning and implementing an excursion vary widely and the approval process even more so. This macro reflection of the process often occurs in individual schools where, at a micro level, the creation, planning, implementation and approval processes for excursions can vary between the sub-schools of a large school or can even vary between individual departments. Teachers who teach across several sub-schools, and these are often specialist teachers such as language teachers, must be able to deal with differing variables and procedures for each sub-school. This simply adds to the overall complexity of the process. Teachers may be inclined to resort to 'chalk and talk' pedagogical processes because it just becomes too difficult to navigate the differing lists of expectations and procedures. However, schools have become more aware of these issues and many K-12 schools have moved towards having a single excursion policy and a set of procedures that teachers can follow. This ensures that the policies and procedures are standardised, whilst allowing for slightly differing approval processes to accommodate differing heads of sub-schools. The policy and procedures need to be designed to allow the school to manage the various risks associated with regular off-campus activities, day trips, overnight excursions and international or interstate trips.

The policy should outline a set of general principles to be followed in the planning of excursions to minimise the risks, such as the requirement for a management plan of each excursion to be completed beforehand. The management plan should identify the risks posed by the particular excursion and outline the strategies to mitigate each of the risks. Final approval of an excursion should only be granted by the principal if he or she is satisfied the risks have been appropriately identified and addressed in the management plan. However, schools still tend to be using a paper-and-pen approach and the documentation can be extremely weighty! If schools really want to standardise their processes, they should be online.

Having a seamless online process where teachers can import vendor due diligence forms, insurance information, student and teacher/volunteer data, import the macro risks, identify and add in the micro risks, add in the risk mitigation strategies and add in transport arrangements can reduce the compliance burden immensely. The information is not in one big package of paper. It is online and it can be accessed by other staff who may need to approve various components of the planned activity. Above all, a fully integrated approach to excursion risk management coordinates the response to various types of risk (it accounts for interdependence of risks), resulting in a more efficient process, as well as allowing the school to gain a better view of the risks facing the entire school. Where a school is not seeing the whole picture, it is possible that its response to a particular risk may be inadequate.

4.4 Ensuring that Activities are Properly Documented and Archived

Schools should keep records from each school trip, from:

- the management plan;
- names and contacts of students, staff and teacher in charge;
- contracts entered into with any third-party organisations;
- risk assessments; and
- records of any incidents that may have occurred on an excursion.

Many non-government schools have developed recordkeeping practices in response to national privacy legislation but this is not the case across the board. However, there is also no clear directive on how records relating to excursions should be kept.

Current record keeping of excursions in schools varies widely. However, based on anecdotal evidence and from interviews conducted with a number of schools in several jurisdictions, the archiving of excursion planning and approval and documentation of any incidents that took place whilst on the excursion, is often conducted in an ad hoc manner. Some of the practices that were discovered during these interviews included:

- some teachers keep their own management plans, mistakenly believing that the documents are their own personal property;
- some departments keep all planning processes. Sub-schools store some management plans. Generally, if activities involve interstate or international destinations, they are stored by the school administration;
- schools debate how to store, and if to store, the innumerable parent approval slips. Some schools throw them out after the excursion is complete. Some store them in bundles for each year and archive them. Some separate them into individual student files. Some schools have electronic formats or have purchased software that allows for permissions to be dealt with and stored electronically; and
- schools also allow archival excursion documents to be stored within departments or sub schools.

Many of these commonplace practices raise significant queries and concerns regarding the security and privacy of the information that may be stored. Schools place themselves in positions of high risk if they allow personal information to be stored in electronic or paper formats in various locations on and off the school campus.

4.5 Developing a Healthy Risk Appetite

Schools today are better versed in their general understanding of risk management than they were ten years ago. With the changes that took place in WHS requirements, schools began to develop risk registers and they also began to develop risk mitigation strategies for the WHS risks that they identified. This was a new language for many principals and certainly a new language for many of the school staff. However, this led to the development of risk registers and risk mitigation strategies for excursions.

Physical Education and Outdoor Education staff adopted this process quickly and very effectively as it was often their activities that were deemed to carry the highest levels of inherent risk. Of particular note, the identified risks and mitigation strategies were being recorded and acted upon. Importantly, schools do not have a duty to eliminate **all** risk; this would be impossible. Although schools cannot avoid some incidents, they have a duty to respond to such incidents in such a way as to contain or mitigate the harm.

However, schools seem to have been managing their risks, including their excursion risks, on a divisional basis with each department or sub-school identifying, overseeing and mitigating their own risks. In the business world, this method of managing risks was found to be ineffective against many types of risk because they were often highly interdependent. The result was that when some risks crossed inter-departmental lines, they were being managed in different ways by different people as each area developed their own response to the risk. More alarmingly, other risks were found to be slipping through the cracks altogether. This is a familiar story in schools that operate in the same fashion. It can be argued that every single facet of the operation of a school touches upon risk management. Developing a holistic, online, risk management framework allows a school to understand the types and level of risk inherent in its business - all of its business; and this includes excursions.

A holistic framework outlines the school's approach to risk, as well as outlining the risks themselves. It also helps to establish and develop a risk management culture within the school that is applied to excursions as well. It is not possible to mitigate all risks, but a school should have visibility of the risks it faces and its approach to managing them where this is possible or appropriate. All schools should have in place a risk management procedure for excursions to assess the level of risk for each excursion based on the type of activities involved. Risk assessment involves assessing the risk in terms of:

- the likelihood of an event occurring (e.g. the likelihood of a student suffering a health incident); and
- the potential consequences if the event was to occur (e.g. difficulty accessing medical treatment).

Through evaluating the possible occurrence based on these factors, schools can establish an overall risk rating (usually low, moderate, high or extreme). The degree of risk generally determines the strength of controls, or mitigation strategies that must be in place. Common risk mitigation strategies include student capabilities assessment, supervision and communications strategies as well as critical incident response strategies.

4.6 Adopting a Due Diligence Approach to Vendor Selection

It is commonplace for schools to hire or lease outside venues in order to provide facilities for specific student learning activities that may not necessarily be conducted on the school campus for a variety of reasons. A typical and very common example of this is a school that has a swimming component within its curriculum and they need to hire a local pool. To ensure that they meet their duty of care, child protection and WHS/OHS/OSH responsibilities for their students and their staff, schools should conduct a structured due diligence process regarding their chosen venue/vendor. If schools conducted a formal due diligence process for every vendor that they used, it would ensure that the school has a consistent & documented approach to vetting its vendor relationships. This is especially important if the vendor, as in this example a local pool, is providing a regular service or if the vendor takes on a component of duty of care regarding the students.

If a due diligence is to be carried out for every vendor, then it is essential to have a standard set of due diligence questions that the school uses in order to be consistent. These can be supplemented with other specific questions if necessary. It would be simply impossible, and a great waste of time, to reinvent due diligence questions every time a new vendor is to be assessed. In addition, schools need to glean enough information from each due diligence process to feel **assured** that the vendor that they are about to select can provide the expected service to jurisdictional legislative standards and the **standard as determined by the school**. Schools should, therefore, conduct due diligence processes that are proportionate to the vendor's perceived risk. Basically, the greater the risk, the more diligence

that should be conducted.

Some vendors may wish to provide their own form of due diligence - and this can often be seen on many 'excursion provider' websites. However, schools should not accept this as a fait accompli. It is vital that the vendors are able to show evidence that they can provide the expected service to the standard as determined by the school. This may not be possible on their own forms. However, if the school's due diligence form is accessible online, the vendor could enter some of the information for each due diligence item and attach any relevant documents such as certificates of insurance.

If a vendor or contractor behaves in a negligent manner, a school may be liable in two ways. Firstly, because it has a non-delegable duty of care and secondly, because it has failed to ensure the vendor has the appropriate qualifications and experience to run the activity safely and is familiar with and agrees to abide by the school's child protection policies and procedures. If a school has checked the qualifications, equipment and experience of the vendor (conducted a formal due diligence process) then it may be able to argue that it has taken all reasonable care and was acting in a way that any **reasonable** school would act in similar circumstances.

Ultimately, schools must be aware of the duty of care they owe to students regardless of any vendor or contract arrangements they have undertaken (Oliver, 2016).

4.7 Integrating a Governance, Risk, Compliance & Policy Management (GRC&P) Framework

Many schools have recognised the complexity of governance, risk and compliance (GRC) data management and have invested in GRC&P software systems. These systems streamline many aspects of the risk, task and incident management process through automated email reminders and the provision of advanced reporting outcomes that enable schools to enhance their decision-making processes. Do these systems integrate with any procedures or systems that are in place regarding excursion planning, approval and archiving? If excursion planning and approval is all on paper or part paper/part document rather than online, then any integration would be highly unlikely. Some of the greatest risks for a school take place whilst students and staff are on excursions. Risks in the classroom, with the exception of science experiments and practical classes, tend to be fairly minimal compared to the variety of and consequences of risks associated with excursion activities.

The advantage of having a GRC&P system that can integrate with the excursion planning procedures is that it will allow schools to more effectively manage the requirements of regulators and the federal, state and territory legislative frameworks associated with excursions. In addition, it would also allow schools to better manage their record keeping obligations. Having one online portal where:

- risks can be identified and assessed;
- planning and approval can take place;
- due diligence processes with all external providers can be accessed and stored;
- parent approvals can be digitally recorded and stored;
- policy and procedure documents can be accessed; and
- past excursion documentation can be archived for use at a later stage;

seems to be a no-brainer, but even with the available technology and the knowledge that it is invaluable, it is still rarely done.

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