



DIOCESE OF LISMORE

VIOLENCE IN SCHOOLS RESOURCE AND SUPPORT PACKAGE

SECTION 1

Introduction

Support Document for the Implementation of Guidelines Issued Under
Part 5A of the Education Act 1990 for the Management of Health and
Safety Risks Posed to Schools by a Student's Violent Behaviour

Section 1 Contents:

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The information in this support document has been gathered from a diverse group of jurisdictions and organisations and we acknowledge them as our source.

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RATIONALE

The majority of unacceptable behaviours encountered can be managed within the context of the school's Student Welfare and Discipline policies. However, when behaviour is identified as a potential risk to the health and safety of the student, other students, staff, visitors or property, further steps may need to be taken to assess the behaviour and implement safe strategies to support the behaviour. A diocesan process for assessing and supporting student behaviour needs to be followed.

It must be recognised that the students themselves are neither a hazard nor a risk but some of their behaviours can be a risk to themselves and to others. Effective management of behaviour is necessary to ensure the health and safety of staff and students and to meet requirements of legislation. Positive behaviour support, flexible learning and teaching, and curriculum modifications and adjustments are central to a school's approach to managing unsafe behaviour. Schools have a duty of care to their students to provide a safe environment which is conducive to learning.

A **risk management approach** supports schools to broaden their preventative strategies. This process places a strong focus on consultation, communication and staff participation. Consultation is not only integral to good management and effective teaching and learning, it is essential to the implementation of sound occupational health and safety practice.

Risk management is a process consisting of well-defined steps supporting better decision-making by more clearly understanding risks and their impacts. In the context of challenging behaviours leading to violence, where violence cannot be prevented, planning should focus on managing and recovering from incidents of violence to minimise the impact on students, employees and visitors alike.

Legislation: Teachers and schools have a duty to take care for the safety of their students. A duty of care is a legal obligation to avoid conduct which carries an unreasonable risk of danger to others.

Guidelines have been issued for the management of health and safety risks posed to schools by a student's violent behaviour under the amendments to *Part 5A* of the *NSW Education Act 1990*. The violent behaviour of a school student can pose a risk to the health and safety of all students (including the student concerned), to school staff and to visitors to the school site. Schools are legally required to first assess and then eliminate or control that risk.

The extent of a teacher's duty of care to students was summarised by the High Court of Australia in *Geyer v Downs* (1977) 138 CLR 91: "Children stand in need of care and supervision and this their parents cannot effectively provide when children are attending school... those then, in charge of them, their teachers... must provide it."

What is the potential risk if that behaviour is not appropriately controlled or eliminated? The leading case in Australia on the responsibility of a school for bullying and violence is *Cox v State of New South Wales* [2007] NSWSC 471. In this case, 18-year-old Benjamin Cox was awarded \$220,000 for pain and suffering associated with bullying and violence which was inadequately handled by the school he attended. The New South Wales Education Department was deemed to have failed to meet its duty of care with respect to this student. Further, the implications of this violence transcended the initial assaults, resulting in the student developing significant psychological conditions and an inability to derive satisfaction from life.

Generally speaking, a higher standard of care is expected from a teacher than from a parent. A school's duty of care to its students is higher again, and may arise from:

- Common Law Negligence
- Assault or Battery
- Occupational Health and Safety
- Family Law
- Mandatory Child Abuse Reporting
- Anti-Discrimination Legislation

Clearly, there are two aspects to the management of violent behaviour for parish schools. One is compliance with the legislation, and the prevention of court awards. Another is the pastoral concern and care of each individual.

SUMMARY OF PART 5A OF THE EDUCATION ACT 1990

This new section allows schools to gain access to information about students in order to assess whether the enrolment of a particular student is likely to constitute a risk to the health or safety of any person, including the student him/herself. In addition, it allows schools to obtain information about a student in order to develop or maintain strategies to manage or eliminate the risk posed. In making an assessment and/or developing a strategy, the school must consult the student concerned and the parents of the student. They must also disclose to the student and parents any relevant information obtained under this section.

Information obtained must not be disclosed, unless an access application is made by the student, the parent, or a person nominated by the student or parent.

Information may be obtained from the following agencies:

- Schools
- The Department of Education
- Non-government schools authority
- TAFE
- Public health organisations
- The Department of Ageing, Disability and Home Care
- Community Services
- The Department of Juvenile Justice
- The Department of Corrective Services
- NSW Police
- Any other agency prescribed by the regulations

A relevant agency has a duty to provide information sought under *Section 5A* if they are in possession of the information. The school may provide the agency with information about the student to assist the agency in providing the information required by the school.

If information about a student is provided in good faith, and with reasonable care, there can be no liability for defamation or civil proceedings. Provision of the information does not, under these circumstances, constitute a breach of professional ethics, or a departure from accepted standards of professional conduct.