

# Information For Schools

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### Appendix 1: Duty of Care Checklist

#### Introduction

Schools provide students with opportunities to undertake a school based apprenticeship or traineeship (SBAT) as part of the school's curriculum offering. Some schools actively seek out these opportunities for many of their students while others might support a much smaller number of students, at least initially, until these programs are well established.

There is a wide range of personnel, including immediate school staff and DET personnel outside the school, that have an interest in and responsibility for the welfare and progress of the school based apprentice or trainee. All parties need to work together to support the student, their parent/carer and the employer in these arrangements.

#### In brief, schools need to ...

- Know the particular needs of the SBAT student
- Facilitate communication and information flow – for example, from parent/carer to employer via the school and school region
- Sight documents prior to endorsing SBAT training plan
- Ensure a SBAT Contact Card has been provided to the student at the sign-up meeting
- Provide preparatory session for the student
- Build relationship with local State Training Services
- Use the Incident Report for School Based Apprentices and Trainees to refer on concerns or grievances to local State Training Services
- Monitor the student's progress and wellbeing and convene regular Catch Up sessions the student.

#### Principals or their nominee need to ...

- Check the student's Application to Establish a School Based Apprenticeship or Traineeship, and sign to endorse if satisfactory.
- Sight the Employer Questionnaire and Checklist before signing and endorsing the Training Plan

### Principals also need to ...

- Deal with an alleged SBAT child protection matter in accordance with the Department's Protecting and Supporting Children and Young People: Revised Procedures if notified to, or identified by the school, and advise the manager of the local State Training Services office of the matter when advised by the Department of Community Services that it is appropriate to do so. This advice should be provided in accordance with the SBAT notification procedures outlined in FAQ11 of this document.

### Key documents

Schools should make themselves familiar with the contents of the following documents:

- Application to Establish a School Based Apprenticeship or Traineeship form
- Employer Questionnaire and Checklist form
- Catch-Up Questionnaire for School Based Apprentices and Trainees
- Paid Work Trial Information Sheet
- Incident Report for School Based Apprentices and Trainees

The above documents together with supplementary information, including the School Based Apprenticeships and Traineeships in NSW 2007 Guidelines together with SBAT information provided to other parties and relevant workplace learning documents, can be found at [www.sbatnsw.info](http://www.sbatnsw.info)

### Important Contacts

- The Vocational Education Consultant in the region with management responsibility for SBATs
- The SBAT Coordinator/s in the school region
- The local State Training Service office on 13 28 11
- The Regional Student Support Coordinator/school learning support team for information about the Higher School Certificate VET Disability Support funds.

## Frequently Asked Questions (FAQs)

### 1. What is the context for the Department's duty of care in relation to SBATs?

The Department, through the school Principal and staff, has a non-delegable duty of care to students that extends to matters relating to the employment and welfare of school based apprentices and trainees.

The school's duty of care does not replace or override the legislative and common law responsibilities of the Department's State Training Services which administers all apprenticeships and traineeships in NSW, nor does it override the legislative and common law responsibilities of the employer.

The duty of care of the school also complements the responsibilities of key parties engaged in supporting apprenticeships and traineeships - for example, Australian Apprenticeship Centres and the local State Training Services which support the promotion and establishment of SBATs, particularly to employers.

In each DET school region there is one or more regional vocational education consultant with management responsibility for the school based apprenticeships and traineeships program. There may also be an active school based traineeship coordinator whose promotional and administrative role also includes school based apprenticeships. Further still, Local Community Partnerships may play a role in supporting school based apprenticeships and traineeships.

The SBAT includes an employment arrangement independently entered into by the student (and their parent if the student is aged under 18) with an employer they have freely chosen. The school is not a party to that contract. Unlike workplace learning programs conducted by schools, the workers compensation insurance arrangements for SBATs are the responsibility of the employer.

In the case of school based apprentices, a long-term employer-employee relationship will continue for several years after the student has completed their Higher School Certificate. These arrangements, however, do not preclude the school from a duty of care to school based apprentices or trainees while they are enrolled at school.

While the employer has legislative responsibility for the student's day to day safety, supervision and welfare while undertaking the employment component of the SBAT, the school has a responsibility to minimise foreseeable risks of harm to the student. The school is likely to know the student better than the employer does in the early stages of the arrangements and the school is also monitoring the student's overall progress towards the Higher School Certificate.

Schools need to demonstrate that they have taken all reasonable steps to support the safety, welfare and well-being of the student who can only undertake the SBAT with the endorsement of the school Principal. A Duty of Care Checklist is provided at the end of this document.

### 2. What are the school's duty of care responsibilities in relation to SBATs?

Key elements of the Department's duty of care that are carried out by the school include:

- facilitating the provision of important information by the student's parent or carer to the employer, where relevant.
- ensuring that the employer has conscientiously addressed the student's safety and welfare in the workplace, particularly if the student has particular needs to be addressed.
- ensuring a safety card (Contact Card) is provided to the student for use.

- facilitating and supporting the flow of information between various parties associated with the SBAT to enable those with particular responsibilities to exercise those responsibilities.
- documenting the reporting, flow of information and follow up by the responsible party of issues or changes in the student's situation that may affect the student's safety or well-being.
- establishing a close collaborative partnership with the local State Training Services office to ensure the student is well managed by all parties.

### 3. What processes that support the Department's duty of care responsibilities?

A number of processes and related documents have been developed to ensure schools meet the duty of care issues referred to above, including a Duty of Care Checklist for Schools.

Whilst in some instances documentation may have already been provided to the relevant party by the STS or school region, it remains the responsibility of the school to ensure that the following occurs:

- ensuring the information provided by the parent/carer on the application for a Application to Establish a School Based Apprenticeship or Traineeship is accurate, particularly in respect of student needs.
- ensure that the parent/carer is well-informed and prepared to take on their required responsibilities in respect of their children's successful completion of the SBAT.
- ensuring the employer has responded to the Employer Questionnaire and Checklist form so that the school is assured that the employer is aware of their responsibilities and obligations in relation to the apprentice or trainee, especially in terms of child protection
- ensuring the Principal or their nominee sight the completed Application to Establish a School Based Apprenticeship or Traineeship and Employer Questionnaire and Checklist form prior to endorsement of the Training Plan.
- ensuring all relevant parties are aware of the Incident Report and how to access it through the [sbatinnsw.info](http://sbatinnsw.info) website and advice about its use from [www.sbatinnsw.info](http://www.sbatinnsw.info) The Incident Report records the details of any injury, grievance or issue and the next action.
- providing a detailed briefing session for the student that addresses key safety and welfare issues, as well as responsibilities and employer expectations.
- ensuring that an initial 'Catch-Up session' is held with the student in the first four weeks of first term and subsequent sessions timetabled each term to monitor their progress and safety, and well-being.

### 4. What school responsibilities are the same for both students undertaking unpaid workplace learning and students undertaking paid employment as part of their school based apprenticeship or traineeship?

Consistent responsibilities include the following:

- providing relevant information to employers and parents/ carers regarding duty of care matters.
- reviewing the elements of the proposed workplace learning component of the school based apprenticeship or traineeship through sighting various documents at the time the Principal or their nominee endorses the Training Plan.
- seeing that the employer has addressed potential risks to the student, including matters identified by the school through the Employer Questionnaire and Checklist form and where applicable, the Student Needs Assessment on the Application form .
- providing suitable preparatory activities, for example, a briefing session on key safety and welfare issues that relate to the employment component of the SBAT.
- providing the safety and emergency procedures card (the Contacts Card) to the student.
- ensuring that there are appropriate follow up sessions to monitor the progress, safety and well-being of students undertaking SBATs.

### 5. How do the school's responsibilities to school based apprentices and trainees differ from their responsibilities to students undertaking unpaid workplace learning opportunities?

Formal supervision of the student in the workplace by the school is not required as the employer and local State Training Services will provide this support. A nominated emergency contact is not required from the school as this is provided by the parent/carer and support is available to the student from local State Training Services.

### 6. What considerations apply in arranging work experience for a prospective school based apprentice or trainee?

Prior to establishing a school based apprenticeship or traineeship, the student or prospective employer may wish to assess the compatibility or suitability of the proposed match. However, both parties need to carefully consider the industrial relations implications that may arise in relation to the process they may choose to determine this.

Under a paid work trial, a student can undertake aspects of the work that they will be performing as an apprentice or trainee. The student must be paid by the employer in accordance with the appropriate industrial instrument and all other relevant employer/employee responsibilities, including workers compensation insurance, apply.

If a short period of work experience is proposed care needs to be taken to ensure that the work experience does not constitute an unpaid work trial. Unpaid work trials are illegal and employers can be prosecuted for having people in their workplace on this basis.

To distinguish work experience from an unpaid work trial in the context of school based apprenticeships and traineeships, the activities undertaken by the student during their work experience must be:

- undertaken as part of an accredited educational course; and
- part of the practical component of that educational course; and
- primarily observational in nature rather than beneficial to the business in terms of profitability.

That is, work experience can only be undertaken when it is part of the practical component of a course or a qualification. In general, placements arranged outside the school's regular work experience program do not meet the above requirements as advised by both the state and federal departments with responsibility for compliance with industrial laws.

Therefore, any student considering an apprenticeship or traineeship in a particular industry cannot undertake 'work experience' to see if they are suited to the industry or the work involved. They may however undertake a paid work trial.

In the unlikely event that a student has already enrolled in the related apprenticeship or traineeship qualification before the establishment of the school based apprenticeship or traineeship, 'work experience' can only be undertaken if that 'work experience' is part of the practical component of that particular course or qualification.

The Paid Work Trial Information Sheet that supports school based apprenticeships and traineeships is available for provision to students, their parents or carers, employers and other relevant parties. It can be downloaded from [www.sbatinnsw.info](http://www.sbatinnsw.info)

#### 7. What SBAT matters are the responsibility of the school?

The school's responsibilities in relation to SBATs during their school attendance days do not differ from those relating to other students in their care. However, it is expected that students will advise the school of any non-attendance at work or training due to illness or other reasons. Students have been advised that they have a responsibility to also inform their employer and RTO if they are unable to attend on the day.

Where issues arise in relation to the apprenticeship or traineeship, generally employers, school based apprentices and trainees and their parents or carers will make the local State Training Services office their first point of contact.

Schools must ensure they keep up to date with the student's attendance at the workplace. To assist, the student will be provided with a Record of Attendance at Work booklet, in which the student will record all work shifts. This booklet is to be sighted by the school at each 'Catch-Up' session.

An alleged child protection matter must be dealt with by the school Principal. All other matters can be referred on to the party with management responsibility for the matter. This is usually the local State Training Services office.

#### 8. What matters should the school refer to the local DET State Training Services office?

When students are undertaking the workplace and training components of their apprenticeship or traineeship, most issues arising fall within the management responsibilities of their supervisor or employer and local State Training Services. Employers, parents/carers and students are advised to this effect.

Complaints or grievances relating to workplace supervision or training, training delivery or assessments by the registered training organisation or SBATs' behaviour or conduct at the workplace should be referred to the relevant State Training Services office. The Incident form should be used for this purpose.

The SBAT Incident Report has been specially developed for schools and all other parties to ensure a consistent means of reporting an issue, injury or incident. It also provides a means of advising other relevant parties that the matter has been raised and documenting the follow up actions.

#### 9. What matters are considered to constitute unacceptable conduct at the workplace?

Employers have been advised that the Department expects employers and their employees to understand that they must at all times conduct themselves appropriately with school based apprentices and trainees irrespective of the age of the apprentice or trainee.

Examples of unacceptable conduct by employers or their employees include:

- any initiation activities or horseplay directed at or involving the school based apprentice or trainee
- behaviour such as the use of inappropriate language in the presence of the young person
- taking advantage of the age and relative inexperience of the apprentice or trainee, particularly if it involves building a relationship of trust with them for the purpose of misconduct
- discrimination directed at the school based apprentice or trainee.

In the event that an incident involving unacceptable conduct occurs in the workplace, the degree of risk to the student determines who should deal with the matter. It is expected that the supervisor or employer would immediately follow up matters such as the above and take action to ensure that they do not happen again. Employers have been advised to contact their local State Training Services office if they have any concerns.

However, the following matters are considered to potentially pose extreme risk to the welfare and safety of any school based apprentice or trainee:

- physical assault or exposure of the school based apprentice or trainee to violence
- physical, verbal or psychological harassment or bullying including scapegoating, humiliation or belittling of the student
- sexual misconduct directed at or involving the school based apprentice or trainee including deliberately exposing the student to sexually suggestive publications; making suggestive remarks; using obscene language or gestures or deliberately exposing the student to sexual behaviour or pornography.

If any of the above matters occur, employers have been advised to immediately remove the student from risk of harm. The next step to be taken by the employer will depend upon the age of the student.

Where the student is aged 18 years or older and the matter occurs in the workplace, employers have been advised that they must deal with the matter, take steps to ensure the incident does not occur again and, where relevant, take appropriate disciplinary action against any employees who may have been involved in the matter.

Employers have also been asked to advise local State Training Services of the incident and the action they have taken in relation to the matter. In the rare case of an allegation of a criminal nature, for example, physical or sexual assault, employers have been advised to contact both the Police and local State Training Services, irrespective of whether the apprentice or trainee is the victim or the perpetrator.

However, where the matter involves a school based apprentice or trainee aged under 18 years additional considerations apply as the matter may need to be followed up as a child protection matter.

In such circumstances, employers who have mandatory reporting responsibilities have been reminded that they are required to immediately contact the Department of Community Services (DoCS) Helpline on 13 36 27 to report matters relating to a young person under 16 years, and to seek advice regarding a young person aged 16 to 17 years.

All other employers have been advised to immediately seek advice from their local State Training Services office on the next steps to be taken in relation to the matter.

#### 10. What procedures apply when a child protection matter relating to a SBAT is first raised with the school?

In the event that an alleged child protection matter in relation to the school based apprentice or trainee is advised to the school or a staff member has reasonable grounds<sup>3</sup> to suspect risk of harm to the school based apprentice or trainee, the Principal must deal with the matter in accordance with the Department's Protecting and Supporting Children and Young People: Revised Procedures. This is irrespective of where the alleged matter occurred or was identified.

If the matter involves an allegation of a child protection nature by a DET staff member (including contractors and volunteers working for DET<sup>4</sup>) against a child or young person, the matter is to be referred to the Employee Performance and Conduct Directorate on (02) 9266 8070. These matters are covered by Responding to Allegations against Employees in the Area of Child Protection 2004 at [https://www.det.nsw.edu.au/policies/student\\_serv/child\\_protection/prot\\_children/PD20020067.shtml](https://www.det.nsw.edu.au/policies/student_serv/child_protection/prot_children/PD20020067.shtml)

If the matter occurred at the workplace or outside the workplace but involved an employee or employer from the school based apprentice or trainee's workplace, following receipt of feedback and advice from DoCS, the Principal must phone the local State Training Services Manager to advise them of the matter and the Principal's actions. The Incident Report must then be faxed confidentially to the State Training Services Manager and to the NSW DET state office.

The Principal's contact with the local State Training Services office is critical as there may be other apprentices or trainees aged under 18 years who are potentially exposed to the same risk at the workplace. Depending on the advice of DoCS, State Training Services may also need to liaise with the employer about implementing their obligations under the Commission for Children and Young People Act (NSW) 1998, referred to later in this FAQ.

In all cases above, it is not appropriate for the school to investigate the matter or make any comment as to the alleged matter. All that is required is for the matter to be reported and notified as indicated above and for the student to be supported while the matter is being followed up. Any communication by the Principal with the student's parent or carer should only occur at DoCS' request and with their advice.

As noted earlier, all employers have legal obligations under the Commission for Children and Young People Act (NSW) 1998 in relation to alleged employee misconduct of a child protection nature against a person aged under 18 years. Employers have been advised to liaise with the local State Training Services office before commencing any action required under this Act.

Further information is provided in the Commission's Employer Guidelines available at <http://www.kids.nsw.gov.au/kids/check.cfm>

Schools should consult the Working with school based apprentices and trainees from NSW government schools - information for employers document to become familiar with the Department's advice to employers in regard to child protection.

#### 11. What procedures apply when a possible criminal matter involving a SBAT is first raised with the school?

If a possible criminal matter involving a school based apprentice or trainee is raised with the school the age of the student will determine the course of action to be taken by the Principal. If the apprentice or trainee is aged 18 or over, the Principal should report the matter to the Police.

If the apprentice or trainee is aged under 18 years the report to the Police should occur in a process determined in discussion with the DoCS Helpline on 13 36 27. Local State Training Services should also be informed of the matter at a time determined to be appropriate by the DoCS Helpline.

3. See NSW Interagency Guidelines for Child Protection Intervention (2006) for an explanation of what constitutes 'reasonable grounds', available at [http://www.community.nsw.gov.au/DOCS/STANDARD/PC\\_100966.html](http://www.community.nsw.gov.au/DOCS/STANDARD/PC_100966.html)

4. Please note: the fact that an employer is engaged in a school based apprenticeship or traineeship does not in itself deem that employer to be a contractor or volunteer of the Department – for the employer to be deemed to be a departmental contractor or volunteer, their contractor or volunteer relationship with the Department would need to exist irrespective of the employment of the school based apprentice or trainee.

Irrespective of the age of the apprentice or trainee, if a DET staff member is implicated in the matter, the Employee Performance and Conduct Directorate is also to be contacted and advice provided to the relevant School Education Director.

If there is any doubt about whether the alleged behaviour may be a crime, schools can obtain advice from the duty Legal Officer, on 02 9561 8538.

## 12. What does the registered training organisation's duty of care entail?

Employers are responsible for nominating the registered training organisation to deliver the training to their school based apprentice or trainee. This training complements the onsite learning the student undertakes whilst employed at the employer's workplace.

In many cases, employers will nominate a TAFE NSW Institute to provide the required formal training to their school based apprentice and trainee. This means there will be an on-going relationship between that employer and the teachers in the registered training organisation delivering the training. In the case of a school based apprenticeship, that relationship continues well after the student has completed their Higher School Certificate.

The local State Training Services office is responsible for monitoring the performance of registered training organisations in delivering training to apprentices and trainees. It is helpful for schools to be aware of the duty of care of registered training organisations because this may alleviate some concerns they might otherwise have in relation to their school based apprentices and trainees.

The registered training organisation has a duty of care to minimise foreseeable risks of harm to the student while they are engaged in their training. In summary, these are:

- ascertaining whether the student has any particular or additional needs to be addressed in the training environment and addressing those needs in the training plan
- ensuring the student is appropriately supervised and supported (taking into account their age and maturity) at all times during the delivery of training, particularly where it involves using equipment/machinery/appliances or vehicles, handling/being exposed to high risk substances/products, working above ground level or participation in activities that are dangerous for new or young workers to undertake
- ensuring that any allegations or concerns about child protection matters are dealt with using the relevant procedures and where required, reported to DoCS, and advised to the local State Training Services manager and the school Principal following receipt of advice from DoCS that such action is appropriate.
- ensuring that any disclosures by the student relating to an incident, grievance, complaint or injury are followed up promptly, using the SBAT Incident Report for School Based Apprentices and Trainees.
- ensuring that other parties that need to know about the matter have been informed - for example, the employer's local State Training Services office and/or the student's school - to enable the student to be appropriately supported by those parties.
- ensuring compliance with relevant child protection legislation, registration and funding contract obligations.

The registered training organisation is not responsible for the student's travel arrangements covering the journey to and from the organisation's premises. It is the responsibility of the parent or carer to ascertain prior to signing of the training contract that all travel arrangements can be safely managed by their child.

However, it is reasonable to expect that the registered training organisation's teacher will emphasise the importance of safely managed travel arrangements as part of their introductory briefing to students.

In the event of an accident during the journey to or from the registered training organisation, the insurances of the employer apply as the training is being undertaken to directly support the apprenticeship or traineeship.

Further information is provided in the Taking care of school based apprentices and trainees from NSW government schools - information for registered training organisations and Taking care of... information for TAFE NSW documents.