



AUSTRALIAN CALISTHENIC FEDERATION INC.

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DUTY OF CARE

It is of the utmost importance that Coaches and Clubs understand when and to what level they owe a duty of care to children in a calisthenic environment.

The notion of Duty of Care is embodied in the Tort of Negligence and is a complex area of law.

The purpose to this paper is to present the notion of the Duty of Care and relate it to common events which occur during the Calisthenic year.

Tort of Negligence basic principles

If the actions or inaction of a person causes injury to another, that person ("Respondent") could be subject to civil action in negligence. For a claim of negligence to be successful, the following elements must be present:

- (a) **a legal duty of care** must be owed by the Respondent to the injured person
- (b) the Respondent must fail to provide the **standard of care expected of a reasonable and prudent person** in the circumstances
- (c) the injury must have been caused by **the action or inaction** of the Respondent
- (d) the injury must have not been the result of insignificant risk.

When do Coaches and Clubs owe a Duty of Care to their Pupils?

Detailed below are specific circumstances where a duty of care is owed and by whom

Standard of Care warranted

The standard of care expected is that of a reasonable and prudent person in the relevant circumstances. The standard of care shifts depending on many factors such as the level of experience of the coach, the probability and gravity of the injury in the

circumstances, and the age of the pupils. Specifically, where young children are involved a coach or other supervisor must take greater care and greater responsibility for the welfare and safety of the child. The younger the child, the greater the care required.

Duty of Care in specific circumstances

Who owes a prime duty of when a child attends a class practice venue?

Parent/Guardian, Coach, the club committee/principal coach, or hall owner

1. Attendance at Class venue

- (ii) When travelling to the scheduled class venue ("Venue"), the duty of care rests with the parent or guardian of that Pupil
- (iii) Once the pupil enters the Venue, but prior to the scheduled class time, the duty of care may shift depending on the **particular Club's arrangements**; primary responsibility may remain with the parent, or it may shift to the Club. For example the Club may require that parents remain with their children until the commencement of the scheduled class. **The venue owner/operator** owes a concurrent duty of care to all persons at the Venue, including pupils, parents, Club committee and coaches.
- (iv) During the scheduled class time, the Club, venue operator and the Pupil's coach will owe concurrent duties of care to the Pupil.
- (v) The primary duty of care remains with the coach whilst the pupil remains in the class room during scheduled class time. Should the pupil leave the class room during the scheduled class time the duty of care will remain with the coach **unless** there is a club committee member or an appointed supervising adult in attendance to tend to the participants needs outside of the classroom.
- (vi) After the scheduled class has finished the coach will owe a duty of care to the pupil until a parent collects the child or a Club Committee member is present to take responsibility for the child until the parent arrives.

2. Attendance at a Competition Venue

- (i) When travelling to the Competition venue ("Venue"), the duty of care rests with the parent or guardian of that Pupil. If a combined form of transport, such as a bus, is organised the duty of care will be with the operator of the transport and potentially with the Club
- (ii) When the pupil arrives at the Venue, the venue operator owes a duty of care to the Pupil and anybody else within the Venue at all times. When the duty of care passes from the parent to the Club and Coaches depends on the arrangements the Club has in place
- (iii) Whilst the Pupil is present at the Venue, whether in the dressing room, travelling around the Venue, performing on stage or awaiting pick up by their parent or guardian post performance, the Club and venue operator owe a duty of care to that Pupil at all times. **Coaches** owe a duty of care to Pupils in the performance of their particular routines. This arises because **the coach** has a special relationship with Pupils. **Coaches** must take reasonable care to ensure that they do not advocate or require Pupils perform a particular movement or routine if they reasonably believe that the Pupil may suffer injury as a result. The likelihood of injury rise if

- the routine is relatively difficult or the individual Pupil can not perform at the relevant standard
- (iv) Travelling home from the Venue the duty of care rests with the parent/guardian

3. Demonstration performances at a Venue (eg Shopping Centre)

The same principles apply as for attendance at a Competition Venue

4. Attendance at functions outside of Scheduled Class Time

It remains that parents and guardians are responsible for that Pupil during travel at the beginning and end of the relevant event. When the Pupil is participating in the event, for example a celebratory dinner, the duty of care will rest with the Club and venue operator, or perhaps other responsible persons that are involved. If parents or guardians are present at such a celebration, it would be expected that the parents or guardians would have the primary duty of care over the child, however it cannot be said the Clubs would be absolved of all responsibility.

Recommendations

1. All Clubs have procedures and protocols in place, which are communicated to parents and guardians, in relation to the responsibility for Pupils upon arrival at a relevant Venue and for pick up of Pupils once the event is finished;
2. Clubs are aware of the insurance details for the Venues they hire or frequent
3. Clubs and Competition Committees undertake a visual inspection of any Venue that they use before allowing Pupils to participate in calisthenic activity. For example, if the flooring surface is slippery or there are potentially dangerous items (such as stacks of chairs) close to where the Pupils are participating such that it maybe unsafe for these Pupils, Clubs should be prepared to stop operating until the situation has been rectified.
4. Coaches must be aware of their responsibilities in relation to teaching movements and choreographing routines at appropriate levels depending on the age and skill of participants.

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