

Your Legal Position

The information below is intended to provide general guidance to University of Tasmania staff coordinators in relation to their legal responsibilities towards students who appear to have difficulties. Please note - this information is intended as a guide only, and not as a substitute for legal advice. Please seek the assistance of the Legal Office for legal advice that considers your particular circumstances. This information is provided solely for the benefit of staff of the University of Tasmania and must not be disclosed to or relied on by any other person.

Privacy Obligations

The University is subject to the *Personal Information Protection Act 2004* ('the Act'), which, among other things, places restrictions on the use and disclosure of personal information by the University. The University's Privacy Policy reflects the University's obligations under the Act, and is available at: http://www.utas.edu.au/universitycouncil/legislation/pol_privacy.doc

The Act prevents the University from using or disclosing personal information for a purpose other than that for which it is collected, except in limited circumstances. One such circumstance is where there is a reasonable belief that the use or disclosure is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare; or a serious threat to public health or public safety. In these circumstances, the information can be used or disclosed without the individual's consent, and such use or disclosure will not breach the University's privacy obligations under the Act. As a matter of policy, the University places further restrictions where the disclosure of counselling information is concerned - in which case, particular senior University authorisation is required (please see the Privacy Policy at the above URL).

Duty of Care (negligence)

The University has a duty of care towards its students to ensure, among other things, that they will not be exposed to any reasonably foreseeable harm. The University must discharge its duty of care by taking all reasonable precautions to ensure that a student is not harmed. Therefore, for the University to breach its duty to care to students, there essentially needs to be a foreseeable risk of harm, and a failure to take precautions to avoid that risk when, in the circumstances, a reasonable person would have taken such precautions. The failure to take precautions must be the cause of the resulting harm to establish negligence. Factors such as the probability and seriousness of the harm, and the ease or difficulty of taking the precautions are relevant to determining what is reasonable to do in the circumstances. A risk of harm is 'foreseeable' where the University is aware of the risk, or ought reasonably to be aware of the risk. In many cases, the issue arises because a risk of harm has already been identified - in which case the only question is whether there are precautions that could be taken to avoid that risk, and if so, whether they are reasonable to take in the circumstances. To best protect the University - where there is a foreseeable risk of harm, and there are precautions that could be taken to avoid the risk, the University should take those precautions unless there is a good reason not to.

Please contact the Legal Office on (03) 6226 2005 for further information or assistance.