

### Insurance implications when a student is hurt in an accident involving a motor vehicle

This lesson deals with any claim involving a student who, whilst under the care of the school, is injured by a motor vehicle. It looks at the incident from the viewpoint of the cover provided under a public liability policy.

This type of claim can be complicated, as it depends on who owns, or was in control of, the motor vehicle at the time of the accident.

For example, where the vehicle is either owned by the school or under the control of the school, there is no

cover under the school's public liability policy.

The policy contains an exclusion for such claims.

Indemnity is excluded because there will usually be other insurance in place when a motor vehicle is involved, namely, compulsory third party insurance (usually covered within motor vehicle registration fees) or comprehensive motor vehicle insurance.

The table below shows where cover would be available:

Motor vehicle is not owned or under the control of the school	Coverage by CCI	Where coverage would be available
Student is hurt, teacher is supervising, school owes duty of care. Neither school nor teacher negligent.	The school and teacher are covered under the school's public liability policy for any legal costs incurred.	Cover would be provided under the motor vehicle policy taken out by the vehicle's owner for any damage to the vehicle and from the compulsory third party insurer (eg:TAC in Victoria) for the injury to the student.
Car owned by school and insured with CCI	Coverage by CCI	Where coverage would be available
Student is hurt, teacher is supervising, school owes duty of care. Neither school nor teacher negligent.	There is no cover under the school's public liability policy due to the motor vehicle exclusion. Cover for damage to vehicle only for a vehicle insured with CCI.	Injury covered by compulsory third party (eg:TAC in Victoria).
Motor vehicle is not owned or under the control of the school	Coverage by CCI	Where coverage would be available
Student is hurt, teacher is supervising, school owes duty of care. School or teacher is found negligent.	The school and teacher are covered under the school's public liability policy for their negligence.	Cover would be provided under the motor vehicle policy taken out by the vehicle's owner for any damage to the vehicle and from the compulsory third party insurer (eg:TAC in Victoria) for the injury to the student. The compulsory third party insurer may seek recovery from the school or the teacher.
Car owned by school and insured with CCI	Coverage by CCI	Where coverage would be available
Student is hurt due to own misconduct, school owes duty of care. School or teacher failed to supervise student and found to have been negligent.	There is no cover under the school's public liability policy due to the motor vehicle exclusion. Cover for damage to vehicle only for a vehicle insured with CCI.	In states with no fault compulsory third party scheme (Victoria and Tasmania), CTP insurer will cover injury to student. In NSW, ACT, QLD, SA and WA, CTP insurer not liable, and school/teacher not indemnified by school's public liability policy for action against them by student.

Generally, compulsory third party insurance schemes would cover most cases of physical injury to students arising from motor vehicles. However, in some states, third party personal injury cover may not apply to injuries arising from misconduct by students in the car itself, as distinct from an accident involving the motor vehicle. In such cases, if the vehicle is owned or under the control of the school, schools and/or teachers may find themselves liable for damages because of a failure to provide appropriate supervision in the circumstances.

When a student is hurt at school, compensation may be afforded under your public liability insurance policy. This is not the case when a motor vehicle owned or under the control of the school is involved because such claims are specifically excluded from public liability policies.

Your public liability policy has the following exclusion:

“Any liability arising out of the use of any vehicle owned by or in the physical or legal control of the Insured:

- (a) which is registered or required to be registered by virtue of any legislation relating to motor vehicles; or
- (b) in respect of which insurance is required by virtue of any legislation relating to motor vehicles.”

Being aware of and managing your risks is the best policy when it comes to the safety of students. However it may also be prudent to ensure you are covered under an appropriate insurance policy for those occasions when despite all care an accident occurs.

Included in this Claims Lesson, on page 3, is a Student Safety Checklist for your reference.

### Other insurance policies that cover students accidents:

**Personal Accident for Schools** – personal accident protection for students whilst on excursions and school camps. Lump sum benefits are provided for accidents and typically, it covers death, permanent disablement and other listed events.

**SchoolCare – Student’s Accident Insurance** – offers lump sum benefits for death, disablement, broken bones and damaged teeth, also available under this policy are additional expenses such as medical expenses (only where law permits), emergency transport and home tuition.

## Duty of Care

In the case of a school, the duty of care owed by a school to a student goes beyond the duty owed by parents to their child. A school authority owes to its students a personal duty to ensure that reasonable care is taken for their safety. The duty cannot be delegated and where a school authority delegates the performance of the duty to a teacher, the authority is liable if the teacher fails to take reasonable care to prevent harm to the students.

Students are often within close proximity to motor vehicles during a number of normal school activities; from school excursions, where they may be in a motor vehicle or crossing a road, to walking across a teachers’ car park or when renovation or construction is occurring at the school and builders’ vehicles are present.

### How to minimise the risk

The movement of vehicles on or near school grounds is a significant safety issue for schools. Whether a vehicle is being driven by a teacher, staff member, parent, student or other person, a school must be aware of the risks posed to passengers, other road users and pedestrians, and should take steps to minimise these risks. Vehicles may pose a hazard through:

- mechanical failure, leading to loss of control of the vehicle
- poor driving techniques, whether from the driver’s inexperience, inattention or intoxication, leading to potential failure to keep watch for pedestrians and other road users or loss of control of the vehicle
- poor traffic management (eg outside school gates and in staff or visitor car parks), which may lead to an increased risk of accidents involving pedestrians and/or other vehicles.

The risk of these hazards causing injury to people at or near the school may be increased at certain times of the day or by certain activities, for example when:

- people are entering or leaving school premises, whether on foot, bicycles or in vehicles
- school staff or parents transport students or other staff in vehicles during school hours or on school-sanctioned activities
- students drive to and from school
- school suppliers are delivering goods to the school.

The presence of young children at schools also increases the risk of incidents involving vehicles, as they are not always fully aware of road safety.

## Student Safety Checklist

	YES	No
Is a school policy on vehicles in place?		
Does the whole school community know of and understand this policy?		
Are departmental guidelines being followed regarding the school's use of vehicles?		
When transporting students for school purposes, is due attention given to the choice of vehicle(s), choice of driver(s) and level of supervision, having regard to safety?		
<b>School vehicles</b>		
Is the person chosen to drive qualified and competent to drive the vehicle, and have the qualifications been sighted?		
Will the students be supervised in the vehicle by someone other than the driver?		
Is the number of passengers in the vehicle an appropriate and safe number?		
Is the vehicle in a good state of repair and safe?		
Is the vehicle appropriately insured, licensed and maintained?		
Does the vehicle have seat belts fitted for every passenger?		
Where seatbelts are fitted, are they being used?		
<b>Teachers' vehicles</b>		
Is it appropriate/necessary for the students to be transported in the teacher's vehicle?		
Has appropriate parental permission been obtained to transport the students in the teacher's vehicle?		
Can the teacher adequately supervise the students being transported in the vehicle?		
Is the teacher's vehicle appropriately insured, licensed, and maintained, and has proof of this been sighted?		
Does the vehicle have seat belts fitted for every passenger?		
Where seatbelts are fitted, are they being used?		
<b>Parents' vehicles</b>		
Is it appropriate/necessary for the parent to transport students in his/her vehicle?		
Has appropriate parental permission been obtained to allow the particular parent to transport the students in his/her vehicle?		
Has it been checked that the parent is qualified and competent to drive the vehicle?		
Can the parent provide adequate supervision for the students in the vehicle?		
Does the vehicle have seat belts fitted for every passenger?		
Where seatbelts are fitted, are they being used?		
<b>Students' vehicles</b>		
Do students know that they must never transport other students for school activities?		
<b>School roads and car parks</b>		
Are traffic routes, speed limits, speed bumps and pedestrian areas on roads and car parks in school grounds clearly signposted?		
Has the need for security measures such as lighting, emergency phones, guards and gates been assessed?		
Are staff, students, parents and others who have drive onto school grounds regularly reminded of the rules that apply and to use extreme caution when driving in and near the school?		
Is a system in place to ensure that only vehicles with legitimate business at the school are allowed onto school grounds?		

(continued on page 4)

**Student Safety Checklist (continued)**

	YES	No
<b>Behaviours and Rules</b>		
Does the school/college have a set of behaviour/safety rules for bus/vehicle travel?		
Have students and parents signed off on the behaviour/safety rules for the bus/vehicle journey? (this should include consequences for poor behaviour)		
In an emergency can communication be established with the school?		
Are busses fitted with first aid kits or is the school taking a portable first aid kit with them?		
Do you know who will be responsible for first aid during the trip?		
Has the person responsible for the trip been trained appropriately in first aid?		
<b>Bus/vehicle Mechanical Safety</b>		
Is the bus/vehicle registered with the road traffic authority?		
Have you viewed/verified the bus/vehicle maintenance records?		
Is the bus/vehicle fully maintained in a safe operational condition in accordance with the manufactures guidelines?		

Further information about risk management for schools is available from the

CCI On-line School Community Safety Library

If you would like to access this library please contact

Jane Curry [jcurry@ccinsurances.com.au](mailto:jcurry@ccinsurances.com.au), or

Julia McIvor [jmcivor@ccinsurances.com.au](mailto:jmcivor@ccinsurances.com.au) or

Complete the form on our website [www.ccinsurances.com.au](http://www.ccinsurances.com.au)

under the risk management section.

For claims, policy or general enquires call CCI on **1300 655 001**

*Please note that CCI Claims Lessons should not be used or relied upon as a substitute for detailed professional advice or as a basis for formulating decisions.*

*This publication should be read in conjunction with the policies and procedures of your organisation and your investment policy wording.*