

# DETERMINING RESPONSIBLE PERSON POLICY



Mandatory – Quality Area 4

## PURPOSE

This policy will provide guidelines to assist in determining the Responsible Person at Auburn South Preschool.

## POLICY STATEMENT

### 1. VALUES

Auburn South Preschool is committed to:

- meeting its duty of care (refer to *Definitions*) obligations under the law
- ensuring staffing arrangements contribute to the health, safety, wellbeing, learning and development of all children at the service
- meeting legislative requirements for a Responsible Person to be on the service premises at all times.

### 2. SCOPE

This policy applies to the Approved Provider, Persons with Management or Control, Nominated Supervisor, Persons in day-to-day Charge, ECT's, educators, other staff, students on placement, volunteers and parents/guardians, children and others attending the programs and activities of Auburn South Preschool.

### 3. BACKGROUND AND LEGISLATION

#### Background

Under the *Education and Care Services National Law Act 2010*, it is an offence to operate an approved centre-based education and care service unless a Responsible Person is physically in attendance at all times the service is educating and caring for children.

An Approved Provider must not operate a service unless there is a Nominated Supervisor appointed for that service. The Nominated Supervisor does not have to be in attendance at the service at all times, but in their absence, a Certified Supervisor is to be placed in charge, ensuring there is always someone on the service premises who has been assessed as fit and proper.

Regulatory Authorities will issue a service supervisor certificate (refer to *Definitions*) for each approved education and care service and the service can decide who will be the Certified Supervisor/s at the service. To be covered by the service supervisor certificate a person needs to be:

- responsible for the day-to-day management of the service; or
- exercising supervisory and leadership responsibilities for part of the service.

The staff record must include the name of the responsible person at the centre-based service for each time that children are being educated and cared for by the service (Regulation 150).

#### Legislation and standards

Relevant legislation and standards include but are not limited to:

- *Education and Care Services National Law Act 2010*: Sections 5, 44, 56, 106–109, 114, 115, 118, 161, 162, 164, 172, 291(5)

- *Education and Care Services National Regulations 2011*: Regulations 35, 46–50, 146, 150, 168(2)(i)(ii), 173, 176(2)(c)
- *National Quality Standard*, Quality Area 4: Staffing Arrangements
  - Standard 4.1: Staffing arrangements enhance children’s learning and development and ensure their safety and wellbeing
- *National Quality Standard*, Quality Area 7: Leadership and Service Management
  - Standard 7.1: Effective leadership promotes a positive organisational culture and builds a professional learning community
    - Element 7.1.5: Adults working with children and those engaged in management of the service or residing on the premises are fit and proper
- *Worker Screening Act 2020*
- *Worker Screening Regulations 2021 (Vic)*

The most current amendments to listed legislation can be found at:

- Victorian Legislation – Victorian Law Today: [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)
- Commonwealth Legislation – Federal Register of Legislation: [www.legislation.gov.au](http://www.legislation.gov.au)

#### 4. DEFINITIONS

The terms defined in this section relate specifically to this policy. For commonly used terms e.g. National Law, National Regulations, Regulatory Authority etc. refer to the *Definitions* file of the PolicyWorks catalogue.

**Approved Provider:** An individual or organisation that has completed an application and been approved by the Regulatory Authority as fit and proper to operate one or more education and care services. Where the applicant is an organisation, each person with management and control of that organisation must complete a separate application form. (Note: Under the *Education and Care Services National Law Act 2010*, Section 5, Definitions: “**person with management or control**, in relation to an education and care service, means – (b) if the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service”.)

**Approved service:** An education and care service for which a service approval exists. A request for service approval must be made in writing to the Regulatory Authority and include prescribed information including details of the Nominated Supervisor and their written consent to be nominated as such.

**Child Information Sharing Scheme (CISS):** CISS enables authorised organisations and services to share information to promote the wellbeing or safety of children.

**Duty of care:** A common law concept that refers to the responsibilities of organisations to provide people with an adequate level of protection against harm and all reasonable foreseeable risk of injury.

**Fit and proper:** A Person with Management or control are required to complete the Declaration of Fitness and Propriety form on the ACECQA website and have this approved by the Regulatory Authority. This form must be completed by an individual provider applicant or in the case of an entity provider applicant, each person with Executive management or control of a service. (Note: Under the *Education and Care Services National Law Act 2010*, Section 5, Definitions: “**person with management or control**, in relation to an education and care service, means – (b) if the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service”.)

**Mandatory Reporting:** Mandatory reporting refers to the legal requirement of certain groups of people to report a reasonable belief of child physical or sexual abuse to child protection authorities.

**Nominated Supervisor:** A person who has been nominated by the Approved Provider of the service under Part 3 of the Act and who has consented to that nomination in writing can be the Nominated Supervisor. All services must have a Nominated Supervisor with responsibility for the service in accordance with the National Regulations. The Approved Provider must take reasonable steps to ensure the Nominated Supervisor is a fit and proper person (refer to *Definitions*), with suitable skills, qualifications and experience. The Regulatory Authority must be notified if the Nominated Supervisor for the service changes or is no longer employed at the service.

**Person in day-to-day charge (Certified Supervisor):** An educator who has been nominated by the Approved Provider or the Nominated Supervisor of a service (in accordance with the National Regulations), and consents in writing to being placed in day-to-day charge of the education and care service.

A Person in day-to-day charge of a service **does not** have the same responsibilities under the National Law as the Nominated Supervisor.

**Supervisor Certificate:** A supervisor certificate is provided to each centre-based service by the Regulatory Authority. The Approved Provider can nominate a person or persons to be the Person in day-to-day charge (Certified Supervisor) at the service without requiring Departmental approval or paying a fee.

**Reportable Conduct Scheme:** Requires some organisations to respond to allegations of child abuse (and other child-related misconduct) made against their workers and volunteers, and to notify the Commission for Children and Young People (CCYP) of any allegations

**Responsible Person:** Centre-based services must have a responsible person present at all times that the service is delivering education and care. The responsible person is the person in day-to-day charge at the service and can be one of the following:

- the Approved Provider (or the person in management or control of the service),
- the Nominated Supervisor of the service, or
- a person placed in day-to-day charge (certified supervisor) of the service.

**Working with Children (WWC) Check:** The check is a legal requirement under the *Worker Screening Act 2020* for those undertaking paid or voluntary child-related work in Victoria. The Department of Justice assesses a person's suitability to work with children by examining relevant serious sexual, physical and drug offences in a person's national criminal history and, where appropriate, their professional history.

**Working with Children (WWC) Clearance:** A WWC Clearance is granted to a person under Worker Screening legislation if:

- they have been assessed as suitable to work with children
- there has been no information that, if the person worked with children, they would pose a risk to those children
- they are not prohibited from attempting to obtain, undertake or remain in child-related employment.

## 5. SOURCES AND RELATED POLICIES

### Sources

- Australian Children's Education and Care Quality Authority (ACECQA), Information Sheets: [www.acecqa.gov.au/national-quality-framework/information-sheets/](http://www.acecqa.gov.au/national-quality-framework/information-sheets/)
- *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011:* [www.acecqa.gov.au](http://www.acecqa.gov.au)
- *Guide to the National Quality Standard:* [www.acecqa.gov.au](http://www.acecqa.gov.au)

### Service policies

- *Code of Conduct Policy*
- *Participation of Volunteers and Students Policy*

- *Privacy and Confidentiality Policy*
- *Staffing Policy*
- *Supervision of Children Policy*

## PROCEDURES

### The Approved Provider is responsible for:

- ensuring there is a Responsible Person (refer to *Background* and *Definitions*) on the premises at all times the service is delivering education and care programs for children
- ensuring that the service has received a supervisor certificate (refer to *Definitions*) from the Regulatory Authority
- nominating sufficient Certified Supervisors to meet legislative requirements for a Responsible Person at the service at all times, including during periods of leave or illness.
- ensuring that any person nominated as Nominated Supervisor or Responsible Person in day-to-day charge: is at least 18 years of age; has adequate knowledge and understanding of the provision of education and care to children; has the ability to effectively supervise and manage an education and care service
- has not been subject to any decision under the *National Law*, or any other children's services or education law, to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person
- has a history of compliance with the *National Law* and other relevant laws (*Regulations 117C and 117B*)
- ensuring that the name and position of the Responsible Person in charge of the service is displayed and easily visible from the main entrance of the service<sup>1</sup> (National Law: Section 172)
- ensuring that the service does not operate without a Nominated Supervisor, and that this person has given written consent to be in the role
- ensuring that the name of the Nominated Supervisor is displayed prominently at the service
- ensuring that information about the Nominated Supervisor, including name, address, date of birth, evidence of qualifications and approved training, and a Working with Children Check (refer to *Staffing Policy*) is kept on the staff record (Regulation 146)
- notifying the Regulatory Authority in writing if there is a change of person in the role of Nominated Supervisor (Section 56, Regulation 35)
- ensuring that, in the absence from the service premises of a Nominated Supervisor a Certified Supervisor (refer to *Definitions*) is placed in day-to-day charge of the service
- ensuring that the Nominated Supervisor and Certified Supervisors have a sound understanding of the role of Responsible Person
- ensuring that the Nominated Supervisor and Certified Supervisors have a clear understanding of their role as a Mandatory Reporter under the Child Safe Standards and Reportable Conduct Scheme
- ensuring that the Nominated Supervisor, Certified Supervisors, ECT's, Educators and other staff have a sound knowledge of the Child Information Sharing Scheme (CISS)
- ensuring details of supervisor certificates are recorded on the staff record
- notifying the Regulatory Authority in writing if there any changes to:
  - the name of the Approved Provider
  - the appointment or removal of a person with management or control of the service operated by the Approved Provider

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<sup>1</sup> The guidelines to the National Regulations state that, given the Responsible Person in charge may change throughout the day (for example, at a changeover of shifts), this requirement might be met on a whiteboard or interchangeable name plate at the entrance of the service premises.

- the status of the Approved Provider as fit and proper
- there is a change to the name or contact details of the Nominated Supervisor
- the Nominated Supervisor is no longer employed or engaged by the service or
- has been removed from the role
- the nominated supervisor withdraws their consent to the nomination
- if a Nominated Supervisor or Responsible Person in day-to-day charge has their Working with Children Clearance or teacher registration suspended or cancelled, or if they are subject to any disciplinary proceedings under the law.

**The Nominated Supervisor is responsible for:**

- providing written consent to accept the role of Nominated Supervisor
- ensuring that, in their absence from the service premises, a Responsible Person (refer to *Definitions*) is placed in day-to-day charge of the service
- ensuring they have a sound understanding of the role of Responsible Person (refer to *Definitions*)
- ensuring that the name and position of the Responsible Person in charge of the service is displayed and easily visible from the main entrance of the service
- supporting the Approved Provider to develop rosters in accordance with the availability of Responsible Persons, hours of operations and the attendance patterns of children
- ensuring they have a sound understanding of their role as a Mandatory Reporter under the Child Safe Standards and Reportable Conduct Scheme
- ensuring they have sound knowledge about the Child Information Sharing Scheme (CISS)
- notifying the Approved Provider and the Regulatory Authority within 7 days of any changes to their personal situation, including a change in mailing address, circumstances that affect their status as fit and proper, such as the suspension or cancellation of a Working with Children Check card or teacher registration, or if they are subject to disciplinary proceedings.

**Certified Supervisors are responsible for:**

- providing written consent to accept the role of Responsible Person in day-to day charge (certified supervisor)
- checking that the name and position of the Responsible Person (refer to *Definitions*) in charge of the service is displayed and easily visible from the main entrance of the service
- informing the Approved Provider and/or Nominated Supervisor in the event of absence from the service due to leave or illness so they can be replaced by another Responsible Person
- ensuring they have a sound understanding of the role of Responsible Person
- understanding that a Certified Supervisor placed in day-to-day charge of an approved service **does not** have the same responsibilities under the National Law as the Nominated Supervisor
- ensuring they have a sound understanding of their role as a Mandatory Reporter under the Child Safe Standards and Reportable Conduct Scheme
- ensuring they have sound knowledge about the Child Information Sharing Scheme (CISS)
- notifying the Approved Provider and the Regulatory Authority within 7 days of any changes to their personal situation, including a change in mailing address, circumstances that affect their status as fit and proper, such as the suspension or cancellation of a Working with Children Check card or teacher registration, or if they are subject to disciplinary proceedings.

**Educators are responsible for:**

- meeting the qualifications, experience and management requirements if they wish to be nominated as a Certified Supervisor ensuring they have a sound understanding of the role of Responsible Person (refer to *Definitions*)
- providing written consent if accepting the nomination to be a Certified Supervisor.
- ensuring they have a sound understanding of their role as a Mandatory Reporter under the Child Safe Standards and Reportable Conduct Scheme
- ensuring they have sound knowledge about the Child Information Sharing Scheme (CISS)

**Parents/guardians are responsible for:**

- reading and understanding this policy
- being aware of the Responsible Person at the service on a daily basis.

**Volunteers and students, while at the service, are responsible for following this policy and its procedures.**

**EVALUATION**

In order to assess whether the values and purposes of the policy have been achieved, the Approved Provider will:

- regularly seek feedback from everyone affected by the policy regarding its effectiveness
- monitor the implementation, compliance, complaints and incidents in relation to this policy
- keep the policy up to date with current legislation, research, policy and best practice
- revise the policy and procedures as part of the service's policy review cycle, or as required
- notify parents/guardians at least 14 days before making any changes to this policy or its procedures.

**ATTACHMENT 1 - RESPONSIBILITIES OF A PERSON IN DAY-TO-DAY CHARGE****AUTHORISATION**

This policy was adopted by the Approved Provider of Auburn South Preschool on 14<sup>th</sup> June 2017

**Reviewed** June 2023

**REVIEW DATE: JUNE 2025**

This procedure will be reviewed in a 2 yearly policy review cycle or earlier, in response to new information informing best practice including legislation, research, feedback and policy. Auburn South Preschool parent/guardians will be notified 14 days before making changes to this policy or procedures.

## ATTACHMENT 1: RESPONSIBILITIES OF A PERSON IN DAY-TO-DAY CHARGE

The below information has been adapted from the Australian Children's Education and Care Quality Authority, National Quality Framework, [Nominated Supervisors Information Sheet](#)

As the person responsible for the day-to-day management of an approved service, nominated supervisors have a range of responsibilities under the *National Law and National Regulations* including:

**Note:** *If the nominated supervisor is not present, the allocated responsible person should be aware and enact these responsibilities*

### Educational programs

- ensuring educational programs are:
  - based on and delivered in accordance with an approved learning framework
  - based on the developmental needs, interests and experiences of each child
  - designed to take into account the individual differences of each child (*National Law: Section 168*)

### Supervision and safety of children

- ensuring children are adequately supervised, are not subject to inappropriate discipline, and are protected from harms and hazards (*National Law: Sections 165-167*)

### Entry to and exit from the premises

- ensuring children do not leave the education and care service premises except in accordance with the *National Regulations* (for example, with a parent, on an authorised excursion, or for emergency medical treatment)
- ensuring that a parent of a child being educated and cared for by the service may enter the service premises at any
- time when the child is being educated and cared for by the service—except when:
  - permitting entry would pose a risk to the safety of the children and staff or conflict with the duty of the supervisor under the National Regulations, or
  - the supervisor is aware the parent is prohibited by a court order from having contact with the child (*Regulation 99*)
- ensuring an unauthorised person (as defined in the National Law) is not at the service while children are present unless the person is under direct supervision (*National Law: Section 170*)

### Food and beverages

- ensuring adequate health and hygiene practices and safe practices for handling, preparing and storing food are implemented at the service to minimise risks to children (*Regulation 77*)
- ensuring children being cared for by the service have access to safe drinking water at all times and are offered food and beverages on a regular basis throughout the day (*Regulation 78*)
- ensuring that, where food and beverages are supplied by the service, they are:
  - nutritious and adequate in quantity
  - chosen with regard to the dietary requirements of individual children (*Regulation 79*)

### Administration of medication

- ensuring that medication is not administered to a child being cared for by the service unless the administration is authorised (except in the case of anaphylaxis or asthma emergency) and is administered in accordance with the National Regulations (*Regulations 93-96*)
- where medication is administered to a child without authorisation in a case of an anaphylaxis or asthma emergency, ensuring that a parent of the child and emergency services are notified as soon as practicable (*Regulation 94*)



## Prescription and non-prescription drugs and alcohol

that while educating and caring for children at the service, all staff must not consume alcohol or be affected by alcohol or drugs (including prescription medication) so as to impair their capacity to supervise or provide education and care to children ([Regulation 83](#))

## Sleep and rest

- taking reasonable steps to ensure that the needs for sleep and rest of children are met, having regard to the ages, development stages and individual needs of children ([Regulation 81](#))

## Excursions

- ensuring that a risk assessment is conducted before an excursion in accordance with the National Regulations ([Regulations 100-101](#)), and specifically that the risk assessment is conducted before authorisation is sought to take a child on the excursion ([Regulation 102](#))

## Transportation of children other than part of an excursion (if applicable)

- ensuring that a risk assessment is carried out in accordance with [Regulation 102C](#) before an authorisation referred to in [Regulation 102D\(4\)](#) is sought to transport a child ([Regulation 102B](#))

## Staffing

- ensuring the prescribed educator to child ratios are met and each educator at the service meets the qualification requirements relevant to the educator's role ([Regulations 123 - 128](#))