

Yarram Early Learning Determining Responsible Person Policy

Quality Area 7: Governance and Leadership

PURPOSE

This policy will provide guidelines to assist in determining the Responsible Person at Yarram Early Learning Incorporated.

POLICY STATEMENT

VALUES

Yarram Early Learning Incorporated 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.

SCOPE

This policy applies to the Responsible Person, Nominated Supervisor, educators, staff, students on placement, volunteers and parents/guardians of Yarram Early Learning Incorporated.

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 present.

Legislation requires that a Responsible Person is physically in attendance at all times the service is educating and caring for children. The Responsible Person is either the Approved Provider (or the person in management or control of the service), the Nominated Supervisor of the service, or a Responsible Person who has been placed in day-to-day charge of the service. For more information regarding these terms, refer to *Definitions*.

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 Responsible Person is to be placed in charge, ensuring there is always someone on the service premises who has been assessed as fit and proper by the Regulatory Authority. It is important to note that a Responsible Person placed in day-to-day charge of a service **does not** have the same responsibilities under the National Law as the Nominated Supervisor.

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, 172, 291(5)
- *Education and Care Services National Regulations 2011*: Regulations 35, 46–49, 146, 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
- *Working with Children Act 2005* (Vic)
- *Working with Children Regulations 2006* (Vic)

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 *General Definitions* section of this manual.

Approved Provider: An individual or organisation that has completed an application form and been approved by the Regulatory Authority as fit and proper (in accordance with Sections 12, 13 and 14 of the National Law) to operate one or more education and care services.

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.

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: In determining whether an applicant is fit and proper, the Regulatory Authority must take into account the applicant's history of involvement in education and care services, their compliance with current and prior law, criminal history record check and any bankruptcy or insolvency issues. The Regulatory Authority may reassess fitness and propriety at any time. Applicants 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 management or control of a service. The form is available at:

<https://www.acecqa.gov.au/resources/applications> (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".)

Nominated Supervisor: A person who is a Responsible Person and has been nominated by the Approved Provider of the service under Part 3 of the Act to be the Nominated Supervisor of that service, and who has consented to that nomination. The Nominated Supervisor has day-to-day responsibility for the service in accordance with the National Regulations. All services must have a Nominated Supervisor.

Responsible Person: The Approved Provider (if that person is an individual, and in any other case the person with management or control of the service operated by the Approved Provider) or a Nominated Supervisor or Responsible Person has been placed in day-to-day charge of the service in accordance with the National Regulations.

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/
- *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011*: www.acecqa.gov.au
- *Guide to the National Quality Standard*: 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 a person eligible to be nominated as a Responsible Person Has agreed to the role of a Responsible Person (refer to *Definitions*) and has appropriate skill level, experience, qualifications and approval to work with children, as required under the National Law and National Regulations
- 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 service¹ (National Law: Section 172)
- Ensuring that the service does not operate without a Nominated Supervisor, and that this person has given written consent
- 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, another Responsible Person is placed in day-to-day charge of the service
- Ensuring that the Nominated Supervisor and Responsible Person have a sound understanding of the role of Responsible Person
- Ensuring there are sufficient educators who have agreed to the role of a Responsible Person (refer to *Definitions*) to meet the legislative requirement for a Responsible Person at the service during periods of leave or illness
- Ensuring details of Responsible Person 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
 - The status of the Approved Provider as fit and proper
- Notifying the Regulatory Authority if a Nominated Supervisor or Responsible Person has their Working with Children Check card 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 is placed in day-to-day charge of the service
- Ensuring they have a sound understanding of the role of Responsible Person
- 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
- Developing rosters in accordance with the availability of Responsible Persons, hours of operations and the attendance patterns of children
- 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
- Notifying the Approved Provider if the Regulatory Authority cancels their Responsible Person role for any reason.
- **The Supervisors and relevant Room Leader are responsible for ensuring volunteers and students are following this policy and the outlines procedures.**

Responsible Person is responsible for:

- Providing written consent to accept the role of Responsible person
- Checking 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

- 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
- Abiding by any conditions placed on the Supervisor Certificate
- Understanding that a Responsible Person placed in day-to-day charge of an approved service **does not** have the same responsibilities under the National Law as the Nominated Supervisor
- 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
- Notifying the Approved Provider if the Regulatory Authority cancels their Responsible Person role for any reason.

Educators are responsible for:

- Meeting the qualifications, experience and management requirements if they wish to gain the role as a Responsible Person, as defined in the National Regulations (Regulations 46–49)
- Providing written consent if accepting the nomination to be a Responsible Person

Parents/guardians are responsible for:

- Reading and understanding this policy
- Being aware of the responsible person at the service on a daily basis.

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.

ATTACHMENTS

Attachment one: Letter and information for Responsible Person

AUTHORISATION

This policy was adopted by Yarram Early Learning Incorporated in June, 2022.

REVIEW DATE: June 2022

Attachment 1: Nomination of Responsible person



156 Grant Street
Yarram 3971
5182 5190
admin@yarramelc.com.au

insert date

Dear _____,

I as Nominated Supervisor of Yarram Early Learning would like to nominate you to be classified as a "responsible person" for the Yarram Early Learning Centre.

You have proven to have adequate knowledge and understanding of the provision of education and care to children and the ability to effectively supervise and manage an education and care service.

When the Centre Director or Assistant Director are not present at the service you may be required to be placed in day-to-day charge, this includes early morning and late afternoon shifts.

This enables YELC to have a responsible person at the centre at all times the service is educating and caring for children.

Being in day-to-day charge of a service does not place any additional legal responsibilities on a person under the National Law. The responsibilities relevant to educators under the National Law continue to apply.

Please find attached information on the expectations of a "Responsible Person" for your information.

Please indicate your consent to undertake this role by signing in the section below.

Yours sincerely,

X

Cathy Gay
Centre Director - Yarram Early Learning Inc

I, _____ accept the nomination of Responsible Person with YELC. I have read and understood the responsibilities of this nomination.

X

Employees Signature

X

Date

