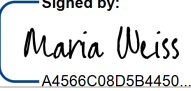


# Policy

## Early Years – Determining the Responsible Person at the Early Years Service

|                                     |                                                                                                                                      |                                        |                                                          |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|----------------------------------------------------------|
| <b>Date of Adoption</b>             | 13 April 2013                                                                                                                        |                                        |                                                          |
| <b>Adoption Method</b>              | <input type="checkbox"/> Council                                                                                                     | <input type="checkbox"/> CEO           | <input checked="" type="checkbox"/> Director Community   |
| <b>Director Signature</b>           | Signed by:<br><br><small>A4566C08D5B4450...</small> |                                        | <b>Date</b><br>14-11-2024                                |
| <b>Responsible Officer and Unit</b> | Samantha Waymouth, Coordinator Early Years Services                                                                                  |                                        |                                                          |
| <b>Nominated Review Period</b>      | <input checked="" type="checkbox"/> Annually                                                                                         | <input type="checkbox"/> Every 4 years | <input type="checkbox"/> Other ( <i>please specify</i> ) |
| <b>Last Endorsement Date</b>        | October 2020                                                                                                                         |                                        |                                                          |
| <b>Next Endorsement Date</b>        | November 2025                                                                                                                        |                                        |                                                          |

Macedon Ranges Shire Council acknowledges the Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Peoples as the Traditional Owners and Custodians of this land and waterways. Council recognises their living cultures and ongoing connection to Country and pays respect to their Elders past, present and emerging. Council also acknowledges local Aboriginal and/or Torres Strait Islander residents of Macedon Ranges for their ongoing contribution to the diverse culture of our community.

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## Purpose/Objective

This policy provides guidelines to assist in determining the responsible person at Council's Early Years Services.

## Scope

This policy applies to staff, volunteers, students on placement at kindergartens and parents/guardians of children at Council's Early Years Services.

## Background/Reasons for Policy

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 responsible person, such as a person in day-to-day charge, must be present.

## Gender Impact Assessment

In accordance with the *Gender Equality Act 2020*, a Gender Impact Assessment was not required in relation to the subject matter of this policy.

## Definitions

| Term              | Definition                                                                                                                                                                                                                                                              |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 <i>Sections 12, 13 and 14</i> of the <i>National Law</i> ) 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.                                                                                                                                                                                                                                                                                                                                                          |
| Person in day-to-day charge | A person who is placed in day-to-day charge of an education and care service by the approved provider or a nominated supervisor, and who has consented to the placement in writing ( <i>National Regulations 117A</i> ).                                                                                                                                                                                                         |
| 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 person       | 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. Registered teachers and those who hold a current Working with Children Check card are considered to be fit and proper persons. |
| Approved Provider           | An Approved Provider is the only one who has the authority to operate all preschool or long daycare services. Approved providers wanting to operate an education and care service in Victoria must apply to the Victorian Regulatory Authority (Department of Education) for a new service approval.                                                                                                                             |
| Nominated supervisor        | A person who has been nominated by the approved provider of the service, under <i>Part 3</i> of the <i>National Law</i> , to be the nominated supervisor of that service, and who has consented to that nomination in writing. All services must have a nominated supervisor(s) with responsibility for the service in accordance with the <i>National Regulations (Section 5 and 161)</i> .                                     |
| Responsible person          | Centre-based services must have a responsible person present at all times that the service is delivering education and care. The responsible                                                                                                                                                                                                                                                                                     |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       | <p>person is the person in day-to-day charge at the service and can be one of the following:</p> <ul style="list-style-type: none"> <li>the approved provider, if the approved provider is an individual, or in any other case, a person with management or control (refer to Definitions) of an education and care service operated by the approved provider</li> <li>the nominated supervisor of the service</li> <li>a person placed in day-to-day charge of the service (<i>National Law, Section 162</i>).</li> </ul> |
| Working with Children (WWC) check     | <p>The WWC check is a legal requirement, under the <i>Worker Screening Act 2020</i>, 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.</p>                                                                                                              |
| Working with Children (WWC) clearance | <p>A WWC clearance is granted to a person under the <i>Worker Screening Act 2020</i> if:</p> <ul style="list-style-type: none"> <li>they have been assessed as suitable to work with children</li> <li>there has been no information that, if the person worked with children, they would pose a risk to those children</li> <li>they are not prohibited from attempting to obtain, undertake or remain in child-related employment.</li> </ul>                                                                            |

## References

- > Australian Children's Education and Care Quality Authority (ACECQA), Information Sheets: <https://www.acecqa.gov.au/resources/supporting-materials/infosheet>

- > Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011: <https://www.acecqa.gov.au/sites/default/files/2018-01/NQF-Resource-02-Guide-to-ECS-Law-Regs.pdf>
- > Guide to the National Quality Standard: <https://www.acecqa.gov.au/nqf/about/guide>

## Related Policies

- > Early Years Policy - Child Safe Environment and Wellbeing
- > Early Years Policy - Staffing Requirements
- > Early Years Policy - Supervision of Children
- > Employee Code of Conduct (Council)
- > Privacy Policy (Council)
- > Volunteer Policy (Council)

## Related Legislation

- > Child Safe Standards
- > *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)*
- > *Worker Screening Act 2020*
- > *Worker Screening Regulations 2021 (Vic)*

## Responsibilities

### Mandatory – Quality Area 4

| Responsibilities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Approved provider and persons with management or control | Nominated supervisor and persons in day-to-day charge | Early childhood teacher, educators and all other staff | Parents/guardians | Contractors, volunteers and students |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------|-------------------|--------------------------------------|
| R indicates legislation requirement, and should not be deleted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                          |                                                       |                                                        |                   |                                      |
| Ensuring there is a responsible person on the premises at all times the service is delivering education and care programs for children ( <i>National Law: Section 162</i> )                                                                                                                                                                                                                                                                                                                                                                                                           | R                                                        | ✓                                                     |                                                        |                   |                                      |
| Nominating sufficient nominated supervisors to meet legislative requirements for a responsible person at the service at all times, including during periods of leave or illness ( <i>National Law, Section 161A</i> )                                                                                                                                                                                                                                                                                                                                                                 | R                                                        |                                                       |                                                        |                   |                                      |
| Ensuring that a person nominated as a nominated supervisor or a person in day-to-day charge: <ul style="list-style-type: none"> <li>is at least 18 years of age</li> <li>has adequate knowledge and understanding of the provision of education and care to children</li> <li>has the ability to effectively supervise and manage an education and care service</li> <li>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, suspect, or cancel a licence, approval, registration,</li> </ul> | R                                                        | ✓                                                     |                                                        |                   |                                      |



| Responsibilities                                                                                                                                                                                                                                                                                                                                                                                | Approved provider and persons with management or control | Nominated supervisor and persons in day-to-day charge | Early childhood teacher, educators and all other staff | Parents/guardians | Contractors, volunteers and students |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------|-------------------|--------------------------------------|
| <p>certification or other authorisation granted to the person</p> <ul style="list-style-type: none"> <li>has a history of compliance with the National Law and other relevant laws (<i>Regulations 117C and 117B</i>)</li> </ul>                                                                                                                                                                |                                                          |                                                       |                                                        |                   |                                      |
| Ensuring that the service does not operate without a nominated supervisor(s), and that the nominated supervisor(s) has given written consent to be in the role ( <i>National Law: Section 161</i> ) ( <i>Regulation 117A (b)</i> )                                                                                                                                                              | R                                                        | ✓                                                     |                                                        |                   |                                      |
| Ensuring that an early childhood teacher/educator gives written consent to being a person in day-to-day charge ( <i>Regulation 117A (b)</i> )                                                                                                                                                                                                                                                   | R                                                        | ✓                                                     | ✓                                                      |                   |                                      |
| Ensuring that the name of the nominated supervisor is displayed prominently at the service ( <i>National Law: Section 172</i> ) ( <i>Regulation 173</i> )                                                                                                                                                                                                                                       | R                                                        | ✓                                                     |                                                        |                   |                                      |
| Ensuring that information about the nominated supervisor, including name, address, date of birth, evidence of qualifications, approved training, a Working with Children clearance or teaching registration, and other documentary evidence of fitness to be a nominated supervisor (refer to Early Years Policy - Staffing Requirements) is kept on the staff record ( <i>Regulation 146</i> ) | R                                                        | ✓                                                     |                                                        |                   |                                      |
| <p>Notifying the Regulatory Authority if:</p> <ul style="list-style-type: none"> <li>there is a change to the name or contact details of the nominated</li> </ul>                                                                                                                                                                                                                               | R                                                        | ✓                                                     |                                                        |                   |                                      |

| Responsibilities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Approved provider and persons with management or control | Nominated supervisor and persons in day-to-day charge | Early childhood teacher, educators and all other staff | Parents/guardians | Contractors, volunteers and students |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------|-------------------|--------------------------------------|
| <p>supervisor (<i>National Law: Section 56, Regulation 35</i>)</p> <ul style="list-style-type: none"> <li>the nominated supervisor is no longer employed or engaged by the service</li> <li>the nominated supervisor has been removed from the role</li> <li>the nominated supervisor withdraws their consent to the nomination</li> <li>a nominated supervisor or 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</li> <li>there is any other matter or incident which affects the ability of the nominated supervisor to meet minimum requirements and re-assessing the nominated supervisor's suitability for the role</li> </ul> |                                                          |                                                       |                                                        |                   |                                      |
| Notifying the approved provider and the regulatory authority within seven 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 clearance or teacher registration, or if they are subject to disciplinary proceedings                                                                                                                                                                                                                                                                                                                                                                                             | R                                                        | ✓                                                     |                                                        |                   |                                      |
| Ensuring that, when the nominated supervisor is absent from the premises,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | R                                                        |                                                       |                                                        |                   |                                      |

| Responsibilities                                                                                                                                                                                                                         | Approved provider and persons with management or control | Nominated supervisor and persons in day-to-day charge | Early childhood teacher, educators and all other staff | Parents/guardians | Contractors, volunteers and students |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------|-------------------|--------------------------------------|
| an alternative responsible person is on site ( <i>National Law, Section 162</i> )                                                                                                                                                        |                                                          |                                                       |                                                        |                   |                                      |
| Ensuring that the nominated supervisor and person in day-to-day charge have a sound understanding of the role of responsible person (refer to Attachment 1)                                                                              | R                                                        |                                                       |                                                        |                   |                                      |
| Ensuring that the staff record includes 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 ( <i>Regulation 150</i> )                             | R                                                        | ✓                                                     |                                                        |                   |                                      |
| Ensuring that the nominated supervisors and person in day-to-day charge have successfully completed child protection training (refer to Early Years Policy - Child Safe Environment and Wellbeing) ( <i>National Law: Section 162A</i> ) | R                                                        |                                                       |                                                        |                   |                                      |
| Developing rosters in accordance with the availability of responsible persons, hours of operations and the attendance patterns of children                                                                                               | R                                                        |                                                       |                                                        |                   |                                      |

## Evaluation

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

- regularly seek feedback regarding this policy and 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 all stakeholders, including parents/guardians, at least 14 days before making any significant changes to this policy or its procedures, unless a lesser period is necessary due to risk (*Regulation 172 (2)*).

## Attachments

- Attachment 1: Responsibilities of a Person in Day-to-Day Charge (D23-79692)
- Attachment 2: Compliance History Declaration 2024 (D19-44074)
- Attachment 3: Consent to be Responsible Person in Charge - 2024 (D24-9567)
- Attachment 4: Nominated Supervisor Consent Form (D24-47658)
- Attachment 5: Template - Responsible person form for display (D24-47664)