

DETERMINING RESPONSIBLE PERSON POLICY

Mandatory – Quality Area 4



PURPOSE

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

POLICY STATEMENT

1. VALUES

Sparkways Early Learning is committed to:

- ▶ meeting its duty of care (refer to Definitions) obligations under the law
- ▶ ensuring staffing arrangements contribute to the safety, health, wellbeing, learning and development of all children at the service
- ▶ meeting legislative requirements for a Responsible Person (refer to Background and Definitions) 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, staff, students on placement, volunteers and parents/guardians of Sparkways Early Learning.

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 (refer to Definitions) 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.

Legislation and standards

Relevant legislation and standards include but are not limited to:

- ▶ Child Safe Standards
- ▶ Education and Care Services National Law Act 2010
- ▶ Education and Care Services National Regulations 2011
- ▶ National Quality Standard, Quality Area 4: Staffing Arrangements
- ▶ National Quality Standard, Quality Area 7: Leadership and Service Management
- ▶ Working with Children Act 2005 (Vic)
- ▶ Working with Children Regulations 2006 (Vic)

4. DEFINITIONS

The terms defined in this section relate specifically to this policy. For commonly used terms e.g. Approved Provider, Responsible Person, National Law, National Regulations, Regulatory Authority etc. refer to the General Definitions section of this manual.

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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.

Person in day-to-day Charge: A person who is placed in day-to-day charge of an education and care service by an Approved Provider or a Nominated Supervisor; and who has consented to the placement in writing (Regulation 117A).

Person with Management or Control: Where the Approved Provider of a service is an eligible association, each member of the association's executive committee is a Person with Management or Control and has the responsibility, alone or with others, for managing the delivery of the education and care service (National Law: Definitions (b)).

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, 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
- ▶ the Nominated Supervisor of the service
- ▶ a Person placed in day-to-day Charge of the service. (National Law, Section 162)

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(s) with responsibility for the service in accordance with the National Regulations (Section 5 and 161).

5. SOURCES AND RELATED POLICIES

Sources

- ▶ Australian Children's Education and Care Quality Authority (ACECQA), Information Sheets: www.acecqa.gov.au
- ▶ 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 Framework: www.acecqa.gov.au
- ▶ **Service policies**
- ▶ *Child Safe Environment Policy*
- ▶ *Code of Conduct Policy*
- ▶ *Participation of Volunteers and Students Policy*
- ▶ *Privacy and Confidentiality Policy*
- ▶ *Staffing Policy*
- ▶ *Supervision of Children Policy*

PROCEDURES

The Approved Provider and Persons with Management or Control are responsible for:

- ▶ ensuring there is a Responsible Person on the premises at all times the service is delivering education and care programs for children
- ▶ 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
- ▶ ensuring that a person nominated as a Nominated Supervisor or a Person in day-to-day Charge:
 - is at least 18 years of age

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- 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, suspect, 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 (National Law: Section 172)
- ▶ 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
- ▶ 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, approved training, a Working with Children Check or teaching registration, and other documentary evidence of fitness to be a Nominated Supervisor (refer to Staffing Policy) is kept on the staff record (Regulation 146)
- ▶ notifying the Regulatory Authority if:
 - there is a change to the name or contact details of the Nominated Supervisor (Section 56, Regulation 35)
 - the Nominated Supervisor is no longer employed or engaged by the service
 - has been removed from the role
 - the Nominated Supervisor withdraws their consent to the nomination
 - if a Nominated Supervisor or person in day-to-day charge has their Working with Children Check or teacher registration suspended or cancelled, or if they are subject to any disciplinary proceedings under the law
 - 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
- ▶ ensuring that, when the Nominated Supervisor is absent from the premises, an alternative Responsible Person is on site
- ▶ ensuring that the Nominated Supervisor and Person in day-to-day Charge have a sound understanding of the role of Responsible Person
- ▶ 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 (Regulation 150)
- ▶ ensuring that the Nominated Supervisors and Person in day-to-day Charge have successfully completed child protection training (see Child Safe Environment Policy)
- ▶ developing rosters in accordance with the availability of Responsible Persons, hours of operations and the attendance patterns of children.

The Nominated Supervisor is responsible for:

- ▶ providing written consent to accept the role of Nominated Supervisor
- ▶ ensuring they have a sound understanding of the role of Responsible Person (refer to Definitions)
- ▶ ensuring that, in their absence from the service premises, a Responsible Person is present
- ▶ ensuring that a Person in day-to-day Charge:
 - is at least 18 years of age

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- 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, suspect, 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 (Regulation 117B)
- ▶ ensuring that an educator gives written consent to being a Person in day-to-day Charge
- ▶ 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
- ▶ 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 or teacher registration, or if they are subject to disciplinary proceedings.

Other staff are responsible for:

- ▶ meeting the qualifications, experience and other requirements if they wish to be nominated as a Person in day-to day Charge
- ▶ providing written consent to be the Person in day-to-day Charge
- ▶ ensuring they have a sound understanding of the role of 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.

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 unless a lesser period is necessary because of a risk.

ATTACHMENTS

Nil

AUTHORISATION

This policy was adopted by the Approved Provider of Sparkways Early Learning on [Date].

REVIEW DATE: [DAY]/[MONTH]/[YEAR]

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- ▶ *The Early Years Learning Framework for Australia: Belonging, Being, Becoming:* www.education.gov.au
- ▶ *Victorian Early Years Learning and Development Framework:* www.education.vic.gov.au
- ▶ Working with Children Check unit, Department of Justice and Regulation – provides details of how to obtain a WWC Check: www.workingwithchildren.vic.gov.au
- ▶ Victoria Police – National Police Record Check: www.police.vic.gov.au

Service policies

- ▶ *Administration of First Aid Policy*
- ▶ *Anaphylaxis Policy*
- ▶ *Asthma Policy*
- ▶ *Child Safe Environment Policy*
- ▶ *Code of Conduct Policy*
- ▶ *Complaints and Grievances Policy*
- ▶ *Curriculum Development Policy*
- ▶ *Delivery and Collection of Children Policy*
- ▶ *Determining Responsible Person Policy*
- ▶ *Inclusion and Equity Policy*
- ▶ *Interactions with Children Policy*
- ▶ *Participation of Volunteers and Students Policy*
- ▶ *Privacy and Confidentiality Policy*
- ▶ *Supervision of Children Policy*

PROCEDURES

The Approved Provider and Persons with Management or Control are responsible for:

- ▶ complying with the service's *Code of Conduct Policy* at all times
- ▶ appointing Nominated Supervisors (refer to Definitions) who are aged 18 years or older, fit and proper and have suitable skills, as required under the Education and Care Services National Law, Section 161 (refer to *Determining Responsible Person Policy*)
- ▶ ensuring that there is a Responsible Person (refer to *Definitions and Determining Responsible Person Policy*) on the premises at all times the service is in operation (National Law: Section 162)
- ▶ ensuring that the Nominated Supervisor, educators and all staff comply with the *Code of Conduct Policy* at all times
- ▶ ensuring that children being educated and cared for by the service are adequately supervised (refer to Definitions and Supervision of Children Policy) at all times they are in the care of that service (National Law: Section 165(1))
- ▶ complying with the legislated educator-to-child ratios at all times (National Law: Sections 169(1) & (2), National Regulations: Regulations 123, 357)
- ▶ ensuring that all staffing meets the requirements of *The Kindergarten Funding Guide* (refer to Sources) at all times the service is in operation
- ▶ complying with relevant industrial agreement and current legislation relating to the employment of staff, including the *Equal Opportunity Act 2010*, *Fair Work Act 2009*, *Occupational Health and Safety Act 2004* and *the Working with Children Act 2005*
- ▶ following the guidelines for the recruitment, selection and ongoing management of staff as outlined in the *Child Safe Environment Policy*

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- ▶ employing the relevant number of appropriately-qualified educators (refer to Definitions) with ACECQA approved qualifications (refer to Background and Sources) (Regulations 126)
- ▶ employing additional staff, as required, to assist in the provision of a quality early childhood education and care program
- ▶ ensuring an early childhood teacher (refer to Definitions) is working with the service for the required period of time specified in the National Regulations, and that, where required, a record is kept of this work (Regulations 130–135, 152, 363)
- ▶ maintaining a record of educators working directly with children in accordance with Regulation 151
- ▶ appointing an appropriately-qualified and experienced educator to be the Educational Leader (refer to Definitions), and ensuring this is documented on the staff record (Regulations 118, 148)
- ▶ ensuring that educators and other staff are provided with a current position description that relates to their role at the service
- ▶ maintaining a staff record (refer to Definitions) in accordance with Regulation 145, including information about the Responsible Person, Nominated Supervisor, the Educational Leader, other staff members, volunteers and students. Details that must be recorded include qualifications, training, Working with Children Check as set out in Regulations 146–149. A sample staff record is available on the ACECQA website: www.cecqa.gov.au
- ▶ complying with the requirements of the Working with Children Act 2005, and ensuring that the Nominated Supervisor, educators and staff at the service have a current WWC Check (refer to Definitions) or a Victorian Institute of Teaching (VIT) certificate of registration (applicable to ECT only).
- ▶ confirming the WWC Check or confirming VIT registration (applicable to ECT only) of all staff prior to their being engaged or employed as a staff member at the service
- ▶ confirming the WWC Check of all volunteers prior to their being permitted to be a volunteer at the service
- ▶ ensuring that a register of the WWC Checks or VIT registrations is maintained and the details kept on each staff record (Regulations 145, 146, 147, 149)
- ▶ determining who will cover the costs of WWC Checks or criminal history record checks (refer to Definitions)
- ▶ developing (and implementing, where relevant) an appropriate induction program for all staff appointed to the service
- ▶ developing rosters in accordance with the availability of Responsible Persons, staff qualifications, hours of operation and the attendance patterns of children
- ▶ ensuring that volunteers/students and parents/guardians are adequately supervised at all times when participating at the service, and that the health, safety and wellbeing of children at the service is protected (refer to Participation of Volunteers and Students Policy)
- ▶ ensuring educators who are under 18 years of age are not left to work alone, and are adequately supervised at the service (Regulation 120)
- ▶ ensuring that there is at least one educator with current approved first aid qualifications, anaphylaxis management training and emergency asthma management training (refer to Definitions) in attendance and immediately available at all times that children are being educated and cared for by the service. (Note: this is a minimum requirement. As a demonstration of duty of care and best practice, ELAA recommends that all educators have current approved first aid qualifications and anaphylaxis management training and emergency asthma management training.) Details of qualifications and training must be kept on the staff record (Regulations 136, 145)
- ▶ developing procedures to ensure that approved first aid qualifications, anaphylaxis management training and emergency asthma management training are evaluated regularly, and that staff are provided with the opportunity to update their qualifications prior to expiry

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- ▶ ensuring that staff records (refer to *Definitions*) and a record of educators working directly with children (refer to *Definitions*) are updated annually, as new information is provided or when rostered hours of work are changed (Regulations 145–151)
- ▶ ensuring that annual performance reviews of the Nominated Supervisor, educators and other staff are undertaken
- ▶ reviewing staff qualifications as required under current legislation and funding requirements on an annual basis
- ▶ ensuring that the Nominated Supervisor, educators and other staff, volunteers and students are not affected by alcohol or drugs (including prescription medication) that would impair their capacity to supervise or provide education and care to children (Regulation 83)
- ▶ ensuring that all educators and staff have opportunities to undertake professional development relevant to their role
- ▶ ensuring that the Nominated Supervisor and educators/staff are advised and aware of current child protection laws and any obligations that they may have under these laws (Regulation 84) (refer to the *Child Safe Environment Policy*)
- ▶ informing parents/guardians of the name/s of casual or relief staff where the regular educator is absent
- ▶ developing and maintaining a list of casual and relief staff to ensure consistency of service provision
- ▶ ensuring that the procedures for the appointment of casual and relief staff are compliant with all regulatory and funding requirements.

The Nominated Supervisor and Persons in Day to Day Charge are responsible for:

- ▶ 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
- ▶ following the guidelines for the recruitment, selection and ongoing management of staff as outlined in the *Child Safe Environment Policy*
- ▶ complying with the service's *Code of Conduct Policy* at all times
- ▶ ensuring adequate supervision of children at all times (refer to *Supervision of Children Policy*)
- ▶ ensuring the educator-to-child ratios are maintained at all times (Regulation 169(3)), that each educator at the service meets the qualification requirements relevant to their role, including the requirement for current approved first aid qualifications, anaphylaxis management training and emergency asthma management training, and that details of such training is kept on the staff record
- ▶ developing rosters in consultation with the Approved Provider in accordance with the availability of Responsible Persons, staff qualifications, hours of operation and the attendance patterns of children
- ▶ ensuring that educators and other staff undertake appropriate induction following their appointment to the service
- ▶ ensuring that all educators and staff have opportunities to undertake professional development relevant to their role
- ▶ participating in an annual performance review
- ▶ ensuring that less experienced educators and others engaged to be working with children are adequately supervised
- ▶ ensuring educators who are under 18 years of age are not left to work alone and are adequately supervised at the service
- ▶ providing details of their current WWC Check or VIT registration for the staff record
- ▶ confirming of Working with Children Checks or VIT registrations of staff

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- ▶ ensuring that they are not affected by alcohol or drugs (including prescription medication) that would impair their capacity to supervise or provide education and care to children (Regulation 83)
- ▶ ensuring that they are aware of current child protection laws and any obligations that they may have under these laws (refer to *Child Safe Environment Policy*)
- ▶ informing parents/guardians of the name/s of casual or relief staff where the regular educator is absent.

All educators and other staff are responsible for:

- ▶ complying with the service's *Code of Conduct Policy* at all times
- ▶ ensuring that they are not affected by alcohol or drugs (including prescription medication) that would impair their capacity to supervise or provide education and care to children
- ▶ providing details of their current WWC Check or VIT registration and where relevant Criminal Records Check for the staff record
- ▶ undertaking the required induction program following appointment to the service
- ▶ advising the Working With Children Check Unit at the Department of Justice and Regulation of any relevant change in circumstances, including change of name, address, contact details and change of employer organisation, including changes to the organisation's contact details
- ▶ where the role involves working with children, providing adequate supervision at all times (refer to Definitions and Supervision of *Children Policy*)
- ▶ maintaining educator-to-child ratios at all times
- ▶ maintaining current approved qualifications relevant to their role, including first aid qualifications, anaphylaxis management training and emergency asthma management training
- ▶ participating in an annual performance review
- ▶ undertaking professional development relevant to their role to keep their knowledge and expertise current
- ▶ supervising educators at the service who are under 18 years of age, and ensuring that they are not left to work alone
- ▶ ensuring that they are aware of current child protection laws and any obligations that they may have under these laws (refer to *Child Safe Environment Policy*).

Parents/guardians, volunteers and students on placement are responsible for:

- ▶ reading this *Staffing Policy*
- ▶ complying with the Code of Conduct for Parents/Guardians (refer to the *Code of Conduct Policy*) at all times
- ▶ complying with the law, the requirements of the *Education and Care Services National Regulations 2011*, and all service policies and procedures
- ▶ following the directions of staff at the service at all times to ensure that the health, safety and wellbeing of children are protected.

EVALUATION

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

- ▶ regularly check staff records to ensure WWC Checks and qualifications are current and complete
- ▶ 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

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- ▶ notify parents/guardians at least 14 days before making any changes to this policy or its procedures unless a lesser period is necessary because of a risk.

ATTACHMENTS

Nil

AUTHORISATION

This policy was adopted by the Approved Provider of Sparkways Early Learning on[Date] .

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