



DETERMINING RESPONSIBLE PERSON POLICY

Mandatory – Quality Area 4

AUTHORISATION

This policy was adopted by the Approved Provider of Holy Trinity Kindergarten on **28/03/13..**

Review date: 28/05/15.

PURPOSE

This policy will provide guidelines to assist in determining the Responsible Person at Holy Trinity Kindergarten.

POLICY STATEMENT

VALUES

Holy Trinity Kindergarten is committed to:

- Meeting its duty of care 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 Approved Provider, Nominated Supervisor, Certified Supervisor, educators, staff, students on placement, volunteers and parents/guardians of Holy Trinity Kindergarten.

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 Certified Supervisor 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 person with a Supervisor Certificate (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 by the Regulatory Authority. It is important to note that a Certified Supervisor 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.

Certified Supervisor: An educator with a Supervisor Certificate (in accordance with the National Regulations) who may consent to being placed in day-to-day charge of the education and care service. The designation must be made by the Approved Provider or the Nominated Supervisor and accepted in writing by the Certified Supervisor. A Certified Supervisor placed in day-to-day charge of a service **does not** have the same responsibilities under the National Law as the Nominated Supervisor. Applications for Supervisor Certificates are assessed by the Regulatory Authority.

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: <http://acecqa.gov.au/application-forms/provider-approvals/> (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 Certified Supervisor 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.

Supervisor Certificate: Allows a person to consent to be the Nominated Supervisor or Certified Supervisor, and be placed in day-to-day charge of an approved service. Applicants must be 18 years or older, be assessed as a fit-and-proper person (refer to *Definitions* above) and meet the minimum requirements for qualifications, experience and management capability required under the Regulations (Regulations 46–49). Applicants for a Supervisor Certificate are assessed by the Regulatory Authority.

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 Certified Supervisor who 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

RELATED POLICIES / PROCEDURES

- *PROC23 Determining Responsible Person Procedure*
- *PO9 Code of Conduct Policy*
- *PO34 Participation of Volunteers and Students Policy*
- *PO8 Privacy and Confidentiality Policy*
- *PO12 Staffing Policy*
- *PO18 Supervision of Children Policy*

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

Nil