

## Determining Responsible Person

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- Authorised by:** This policy was adopted by the Ripponlea Kindergarten Committee of Management at a committee meeting
- Approved date:** 1 May 2023
- Review date:** May 2026

### Purpose

This policy will provide guidelines to assist in determining the responsible person at Ripponlea Kindergarten.

### Values

Ripponlea Kindergarten is committed to:

- the rights of all children to feel safe, and be safe at all times, including:
  - promoting the cultural safety of Aboriginal children
  - promoting the cultural safety of children from culturally and linguistically diverse backgrounds
  - promoting the safety of children with a disability
  - promoting the safety of trans and gender diverse children and their families in ECEC settings
  - ensuring that LGBTIQ+ children and families feel included and safe
- 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.
- being guided by the ethos of our philosophy statement.

### Scope

This policy applies to the approved provider, persons with management or control, nominated supervisor, persons in day-to-day charge, early childhood teachers, educators, staff, students, volunteers, parents/guardians, children, and others attending the programs and activities of Ripponlea 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 (*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 at least one 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 at all times.

## Legislation and standards

This policy is informed by the following legislation:

- 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
- 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)

## Sources and Related policies

### Sources

- Australian Children’s Education and Care Quality Authority (ACECQA), Information Sheets: [www.acecqa.gov.au](http://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](http://www.acecqa.gov.au)
- Guide to the National Quality Framework: [www.acecqa.gov.au](http://www.acecqa.gov.au)

### Related Policies

- Child Safe Environment and Wellbeing
- Code of Conduct
- Participation of Volunteers and Students
- Privacy and Confidentiality
- Staffing
- Supervision of Children

## Procedures

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
<b>R</b> 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 (Education and Care Services National Law, <i>National Law: Section</i>	R	√			

162)					
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 (Education and Care Services National Law, <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 Education and Care Services 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</li> <li>has a history of compliance with the Education and Care Services National Law, and other relevant laws (Education and Care Services National Regulations, <i>Regulations 117C and 117B</i>)</li> </ul>	R	√			
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 (Education and Care Services National Law: <i>Section 161</i> ) (Education and Care Services National Regulations, <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 (Education and Care Services National Regulations, <i>Regulation 117A (b)</i> )	R	√	√		
Ensuring that the name of the nominated supervisor is displayed prominently at the service (Education and Care Services National Law: <i>Section 172</i> ) (Education and Care Services National Regulations, <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 ( <i>refer to Staffing Policy</i> ) is kept on the staff record (Education and Care Services National Regulations, <i>Regulation 146</i> )	R	√			
Notifying the Regulatory Authority if: <ul style="list-style-type: none"> <li>there is a change to the name or contact details of the nominated supervisor (Education and Care Services National Law: <i>Section 56</i>, Education and Care Services National Regulations, <i>Regulation 35</i>)</li> <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>if 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> </ul>	R	√			

<ul style="list-style-type: none"> <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 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 Clearance or teacher registration, or if they are subject to disciplinary proceedings.	R	√			
Ensuring that, when the nominated supervisor is absent from the premises, an alternative responsible person is on site (Education and Care Services National Law: <i>Section 162</i> )	R				
Ensuring that the nominated supervisor and person in day-to-day charge have a sound understanding of the role of responsible person ( <i>refer to Attachment 1</i> )	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 (Education and Care Services National Regulations, <i>Regulation 150</i> )	R	√			
Ensuring that the nominated supervisors and person in day-to-day charge have successfully completed child protection training ( <i>refer to Child Safe Environment and Wellbeing Policy</i> ) Education and Care Services National Law: <i>Section 162A</i> )	R				
Developing rosters in accordance with the availability of responsible persons, hours of operations and the attendance patterns of children.	R				
Supporting the approved provider to develop rosters in accordance with the availability of responsible persons, hours of operations and the attendance patterns of children		√			

## Attachments

- Attachment 1: Responsibilities of a nominated supervisor

## Definitions

The terms defined in this section relate specifically to this policy. For regularly used terms e.g. Approved provider, Nominated supervisor, Notifiable complaints, Serious incidents, Duty of care, etc. refer to the Definitions file on our website.

**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 (Education and Care Services National Regulations, *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 (Education and Care Services 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. (Education and Care Services 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 Education and Care Services National Regulations (*Section 5 and 161*)

**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.

# ATTACHMENT 1:

## Responsibilities of a person in day-to-day charge

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

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:

### 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 (Education and Care Services 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 (Education and Care Services 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 (Education and Care Services National Regulations *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 (Education and Care Services 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 (Education and Care Services National Regulations, *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 (Education and Care Services National Regulations, *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 (Education and Care Services National Regulations, *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* (Education and Care Services 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 (Education and Care Services National Regulations, *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) that would impair their capacity to supervise or provide education and care to children (Education and Care Services National Regulations, *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 (Education and Care Services National Regulations, *Regulation 81*)

## Excursions

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

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

- ensuring that a risk assessment is carried out in accordance with Education and Care Services National Regulations, *Regulation 102C* before an authorisation referred to in Education and Care Services National Regulations, *Regulation 102D (4)* is sought to transport a child (Education and Care Services National Regulations, *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 (Education and Care Services National Regulations, *Regulations 123 - 128*)