



DETERMINING RESPONSIBLE PERSON POLICY

Mandatory – Quality Area 4

PURPOSE

This policy will provide guidelines to assist in determining the Responsible Person at Shine Bright EYM services.

POLICY STATEMENT

1. VALUES

Shine Bright 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.

2. SCOPE

This policy applies to the Approved Provider, Nominated Supervisor, Responsible Person in Charge, staff, students on placement, volunteers and parents/guardians.

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.

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 in Charge 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 Approved Provider, Shine Bright EYM. It is important to note that the Responsible Person in Charge **does not** have the same responsibilities under the National Law as the Nominated Supervisor.

The staff record must include the name of the Responsible Person in Charge at the centre-based service for each time that children are being educated and cared for by the service (Regulation 150).

A record needs to be kept of who the Responsible Person in Charge is on any given day at the service, this is to be included in the children's sign-in record each day.

Legislation and standards

Relevant legislation and standards include but are not limited to:

- *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
- *National Quality Standard*, Quality Area 7: Governance and Leadership
- *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. 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 person: In determining whether an applicant is fit and proper, the Approved Provider 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. Victorian registered teachers and those who hold a current Working with Children Check card are considered to be fit-and-proper persons.

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).

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 in Charge: A staff member 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 and accepted in writing by the staff member. A Responsible in Charge placed in day-to-day charge of a service does not have the same responsibilities under the National Law as the Nominated Supervisor. 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 Responsible Person in 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 Responsible Person placed in Charge of the service. (National Law, Section 162)

5. 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

- *Child Safe Environment Policy*

- *Code of Conduct Policy*
- *Participation of Volunteers and Students Policy*
- *Privacy and Confidentiality Policy*
- *Staffing Policy*
- *Supervision of Children Policy*

Useful Links

- **Nominated Supervisor ACECQA Information Sheet**
http://files.acecqa.gov.au/files/Information_Sheets/NominatedSupervisors.pdf

PROCEDURES

The Approved Provider is responsible for:

- ensuring there is a Responsible Person in Charge (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 in Charge has appropriate skill level, experience, qualifications and approval to work with children, as required under the National Law and National Regulations
- ensuring that a person nominated as a Nominated Supervisor or a Person in day-to-day Charge:
 - is at least 18 years of age
 - 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 service¹ (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 in Charge is on site
- ensuring that the Nominated Supervisor and Responsible Person in Charge have a sound understanding of the role of Responsible Person
- ensuring that the staff record includes the name of the Responsible Person in Charge 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 Responsible Person in Charge have successfully completed child protection training (see Child Safe Environment Policy)
- developing rosters in accordance with the availability of Responsible Person in Charge, 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*)

¹ The guidelines to the National Regulations state that, given the Responsible Person in charge may change throughout the day (for example, at a changeover of shifts), this requirement might be met on a whiteboard or interchangeable name plate at the entrance of the service premises.

- ensuring that the name of the Responsible Person in Charge of the service is displayed in the Children’s sign-in book which is clearly visible from the main entrance of the service² (National Law: Section 172)
- ensuring that a Person in day-to-day Charge:
 - is at least 18 years of age
 - 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 Responsible Person in 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.

Responsible Person in Charge is responsible for:

- providing written consent to accept the role of Responsible Person in Charge
- checking that the name of the Responsible Person in Charge of the service is displayed in the Children’s sign-in book which is clearly visible from the main entrance of the service³ (National Law: Section 172)
- ensuring they have a sound understanding of the role of Responsible Person in Charge which includes 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
- understanding that a Responsible Person in Charge, 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 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
- In the absence of the regular Responsible Person in Charge, staff present on the day will determine the most senior teacher or educator who has given written permission to the Approved Provider to be the Responsible Person in Charge for the day.

Other staff are responsible for:

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

Parents/guardians are responsible for:

- reading and understanding this policy
- being aware of the Responsible Person in Charge 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.

² The guidelines to the National Regulations state that, given the Responsible Person in charge may change throughout the day (for example, at a changeover of shifts), this requirement might be met on a whiteboard or interchangeable name plate at the entrance of the service premises.

³ The guidelines to the National Regulations state that, given the Responsible Person in charge may change throughout the day (for example, at a changeover of shifts), this requirement might be met on a whiteboard or interchangeable name plate at the entrance of the service premises.

ATTACHMENTS

- Attachment 1- [Nominated Supervisor Consent form - NSO1](#)
- Attachment 2 - [Consent to be Responsible Person in Charge form](#)

AUTHORISATION

This policy was adopted by the Approved Provider of Shine Bright EYM: April 2019

REVIEW DATE: 2022