DETERMINING RESPONSIBLE PERSON

QUALITY AREA 4. | ELAA version 1.6

PURPOSE

This policy will provide guidelines to assist in determining the responsible person at Emma McLean Kindergarten and Daycare.

POLICY STATEMENT

The safety, health, wellbeing, rights and best interests of every child are the paramount consideration and must guide all decisions, actions and practices of educators within the education and care service.

VALUES

Emma McLean Kindergarten and Daycare 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.

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 Emma McLean Kindergarten and Daycare.

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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					
1. Ensuring the approved provider notifies the regulatory authority of any appointment or removal of a PMC *(refer to Definitions)* within 14 days of the event (or within 14 days of becoming aware of it) *(Child Safe Standards 2 – 2.3)*	**R**				
2. Submitting the PA08 Notification of change to information about approved provider form *(refer to Sources)* through the NQA IT System *(Child Safe Standards 2 – 2.3)*	**R**				
3. Ensuring each identified PMC completes a PA02 – declaration of fitness and propriety form *(refer to Sources) (Child Safe Standards 2 – 2.3)*	**R**				
4. Ensuring the PCM's *(refer to Definitions)* remain a fit and proper person to be involved with children's education and care. If an existing PMC is no longer fit and proper for any reason, the regulatory authority must be notified within seven days *(Child Safe Standards 2 – 2.3)*	**R**				
5. At all times, approved providers must ensure their PMC information is kept current and accurate *(Child Safe Standards 2 – 2.3)*	**R**				
6. Ensuring the approved provider assesses if a person meets the minimum requirements before they nominate the person to be a nominated supervisor or places a person in day to day charge *(refer to Attachment 2) (Child Safe Standards 2 – 2.3)*	**R**	√			
7. Ensuring there is a responsible person *(refer to Definitions)* on the premises at all times the service is delivering education and care programs for children *(National Law: Section 162)*	**R**	√			
8. 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 *(National Law: Section 161A)*	**R**				
9. 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	**R**	R			

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• 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) (Child Safe Standards 2 – 2.3)*					
10. 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 *(National Law: Section 161) (Regulation 117A (b))*	**R**	√			
11. Ensuring that an early childhood teacher/educator gives written consent to being a person in day-to-day charge *(Regulation 117A (b))*	**R**	√	√		
12. Ensuring that the name of the nominated supervisor is displayed prominently at the service *(National Law: Section 172) (Regulation 173)*	**R**	√			
13. 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 Staffing Policy)* is kept on the staff record *(Regulation 146) (Child Safe Standards 6 – 6.2)*	**R**	√			
14. Completing and maintaining the National Educator Register *(refer to Sources)* in the National Quality Agenda IT System for all educators, volunteers and students, non-educator staff, teachers (regardless of whether or not they are registered or accredited with a teacher registration body), nominated supervisors and directors/co-ordinators *(Child Safe Standards 6 – 6.2)*	**R**	**R**			
15. Notifying the Regulatory Authority if: • there is a change to the name or contact details of the nominated supervisor *(National Law: 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 Clearance status 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 *(Child Safe Standards 6 – 6.2)*	**R**	√			

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16. 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 *(Child Safe Standards 6 – 6.2)*	**R**	√			
17. Ensuring that, when the nominated supervisor is absent from the premises, an alternative responsible person is on site *(National Law: Section 162)*	**R**				
18. 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) (Child Safe Standards 6 – 6.3)*	**R**				
19. 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) (Child Safe Standards 6 – 6.2)*	**R**	√			
20. Ensuring that the nominated supervisors and person in day-to-day charge have successfully completed their mandatory child protection training and this is updated annually *(refer to Child Safe Environment and Wellbeing Policy) (National Law: Section 162A) (Child Safe Standards 8 – 8.1, 8.2, 8.3, 8.4)*	**R**	R	R		R
21. Ensuring that the PMC, nominated supervisors, person in day-to-day charge, all staff members, volunteers, including students complete the mandatory national child safety training within the timeframes prescribed in the National Regulations *(Child Safe Standards 8 – 8.1, 8.2, 8.3, 8.4)*	**R**	R	R		R
22. Ensuring that information used to assess a person's suitability to be a nominated supervisor and in day-to-day charge is kept as evidence on file. This may include records of reference checks, declarations, copies of qualifications or course completion certificates *(Refer to Sources) (Child Safe Standards 6 – 6.2)*	**R**	R			
23. Developing rosters in accordance with the availability of responsible persons, hours of operations and the attendance patterns of children.	**R**				
24. Supporting the approved provider to develop rosters in accordance with the availability of responsible persons, hours of operations and the attendance patterns of children		√			
25. Ensuring Responsible Persons follow child-focused complaints procedures, respond promptly, and cooperate with relevant authorities *Refer to Compliments and Complaints policy (Child Safe Standards 7 – 7.1, 7.2, 7.3, 7.4)*	R	√	√		√

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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

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
- 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
- Commonwealth Legislation – Federal Register of Legislation: www.legislation.gov.au

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 of the PolicyWorks catalogue.

Person in day-to-day charge: A person is in day-to-day charge of an education and care service if:

- the person is placed in day-to-day charge by the approved provider or a nominated supervisor of the service; and
- the person consents to the placement in writing *(National Regulations)*. There are minimum requirements for the person in day-to-day charge.

Person with management or control: a person who has authority or responsibility for, or significant influence over, the planning, direction or control of the activities or the delivery of an education and care service. This includes people in an executive or management role of an approved provider entity who have such authority, responsibility or influence, such as:

- an officer of a body corporate
- each member of the management committee of an association
- each partner of a partnership
- a person in a management position of the business, with the authority or responsibility for, or significant influence over, decisions affecting the delivery of children's education and care (such as a state/territory or area manager).

A nominated supervisor, person in day-to-day charge of a service, or a person who holds other operational management roles in a service (such as a centre manager) would not meet the PMC definition simply by holding these roles in the service. People holding these roles will only meet the PMC definition if they also participate in executive or financial decision-making or have authority or responsibility for, or significant

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influence over, the planning, direction or control of the activities or the delivery of the education and care service.

Responsible person: The responsible person is an individual who is physically present and is responsible for the operation of a centre-based service for an agreed period of time. A responsible person must be present at all times that the approved service operates and can be:

- the approved provider or a person with management or control of the service;
- a nominated supervisor of the service; or
- a person placed in day-to-day charge of the service in accordance with the *National Regulations and National Law*

Nominated supervisor: In relation to an education and care service, means a person who:

- is nominated by the approved provider of the service under Part 3 to be a nominated supervisor of that service; and
- unless the individual is the approved provider, has provided written consent to that nomination *(National Law)*

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.

Working with Children (WWC) Clearance: A WWC Clearance is granted to a person under Worker Screening legislation if:

- they have been assessed as suitable to work with children
- there has been no information that, if the person worked with children, they would pose a risk to those children
- they are not prohibited from attempting to obtain, undertake or remain in child-related employment.

SOURCES AND RELATED POLICIES

SOURCES

- Australian Children's Education and Care Quality Authority (ACECQA), Information Sheets: www.acecqa.gov.au
- ACECQA - New national educator register
- Compliance history statement for a person to be a person in day-to-day charge (PIDTDC) or a nominated supervisor form: www.acecqa.gov.au/resources
- Department of Education - Early Childhood Workforce Register
- Department of Education: AP02 Declaration of Fitness And Propriety
- Department of Education: PA08 Notification of change to information about approved provider
- 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

RELATED POLICIES

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

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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
- notifying all stakeholders affected by this policy 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 nominated supervisor
- Attachment 2: Guidance for approved providers in nominating a nominated supervisor and nominated supervisors for placing a person in day-to-day charge

AUTHORISATION

This policy was adopted by the approved provider of Emma McLean Kindergarten and Daycare October 2026.

REVIEW DATE: October 2027

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ATTACHMENT 1: RESPONSIBILITIES OF A PERSON IN DAY-TO-DAY CHARGE

The below information has been adapted from the Australian Children's Education and Care Quality Authority, National Quality Framework, Nominated Supervisors Information Sheet

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:

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

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 *(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 *(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 *(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 *(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 *(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 *(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 *(Regulation 79)*
- ensuring that, where food and beverages are provided by the service, a weekly menu that accurately describes the food and beverages to be provided is displayed at the premises in a location accessible to parents *(Regulation 80)*

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 *(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 *(Regulation 94)*

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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) so as to impair their capacity to supervise or provide education and care to children *(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 *(Regulation 81)*

Excursions

- ensuring that a risk assessment is conducted before an excursion in accordance with the National Regulations *(Regulations100-101)*, and specifically that the risk assessment is conducted before authorisation is sought to take a child on the excursion *(Regulation 102)*

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

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

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ATTACHMENT 2: GUIDANCE FOR APPROVED PROVIDERS IN NOMINATING A NOMINATED SUPERVISOR AND NOMINATED SUPERVISORS FOR PLACING A PERSON IN DAY-TO-DAY CHARGE

An approved provider must evaluate whether a person meets the minimum requirements before nominating them as a nominated supervisor and/or person in day-to-day charge. The approved provider should also consider if the individual possesses sufficient knowledge and understanding of education and care provisions, and the ability to effectively supervise and manage a service.

Adequate knowledge and understanding

The approved provider should consider the person's qualifications, skills and work experience in determining if the person has adequate knowledge and understanding of the provision of education and care of children this can include but not limited to:

- a supervisor certificate previously issued to the person under the *National Law*, including any conditions which were imposed on the supervisor certificate
- a resumé detailing the person's position, duties, duration of employment and their employer's details
- a written reference from an employer that addresses the person's knowledge and understanding of the provision of education and care to children
- transcripts demonstrating completion of an education and care qualification. For example, evidence of completing an approved diploma level education and care qualification may indicate that the person has adequate knowledge and understanding of the provision of education and care to children.

Approved providers may also consider any other type of evidence that satisfies them of the person's adequate knowledge and understanding of the provision of education and care to children.

Ability to effectively supervise and manage an education and care service

Under the *National Regulations* a nominated supervisor must have the ability to effectively supervise and manage a service. A person may meet the requirement even if they do not have experience managing a service. For example, the approved provider may determine the person has the required ability if they have management experience at other service types, or in related sectors.

The approved provider should consider how a person's skills and experience contribute to their ability to manage a service in accordance with the *National Law and Regulations*.

This may include consideration of a person's:

- knowledge of, and ability to apply, practices that help ensure the education and care needs of children are met
- knowledge of, and ability to apply, practices that help ensure a service complies with the *National Law and Regulations*
- skills in managing relationships with staff and families at the service.

Approved providers may consider the following types of evidence for this requirement, as well as any other type of evidence of a person's management ability:

- a supervisor certificate previously issued to the person under the *National Law* and any conditions which were imposed on the certificate
- a resumé detailing their position, duties, duration of employment and their employer's details
- a written reference from an employer that addresses the person's management ability
- transcripts or a certificate of attainment, demonstrating completion of units of study or professional development that are relevant to supervising or managing an education and care service. For example, courses or units that relate to staff management or managing an education and care service in accordance with the *National Law and Regulations*.

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