

# BUNDOORA PRE-SCHOOL DETERMINING RESPONSIBLE PERSON POLICY

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Mandatory – Quality Area 4

## PURPOSE

This policy will provide guidelines to assist in determining the Responsible Person at Bundoora Pre-school.

## POLICY STATEMENT

### 1. VALUES

Bundoora Pre-school 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 Bundoora Pre-school.

### 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.

**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](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)

### 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
  - 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<sup>1</sup> (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 Approved Provider must ensure that a Responsible Person is present at a centre-based service at all times that the service is educating and caring for children.**

**A responsible person is:**

- the Approved Provider or a Person with Management or Control (currently President and Treasurer. From 2019 – President, Vice President, Treasurer or Secretary. The Persons with Management or Control must have a WWCC, Police Check (or VIT) and be advised to DET via the NQAITS)
- a Nominated Supervisor
- a person in day-to-day charge of the service

All Bundoora Pre-school Staff (excluding Administration Staff) will complete and sign the form (see Attachment 2): *PERSON IN DAY-TO-DAY CHARGE OF BUNDOORA PRE-SCHOOL*:

*COMPLIANCE HISTORY AND DECLARATION OF AGREEMENT* so that they can assume the role of Responsible Person when necessary.

### **Bundoora Pre-school Specific Information**

- During any given session at Bundoora Pre-school, the **Teacher** employed by the service will generally assume the role of the **Person in Day-to-Day Charge/Responsible Person**.
- If a **Relief Teacher** is present, the **Educator** employed by the service will assume the role of **Person in Day-to-Day Charge/Responsible Person**, if/when the Nominated Supervisor is not on the premises.
- If an emergency situation arises\* and the **Teacher** employed by the service must leave the premises, the **Educator** employed by the service will assume the role of **Person in Day-to-Day Charge/Responsible Person**, if the Nominated Supervisor is not on the premises.
- If an emergency situation arises\* and the **Teacher and Educator/s** employed by the service must leave the premises, and the Nominated Supervisor is not present and no other staff member employed by the service is available to attend, a **Person with Management or Control** can become the **Person in Day-to-Day Charge/Responsible Person**, if they are available to attend.
- If a situation arises, with advance notice, where no **Teacher or Educator** employed by the service is available to run a session, the session will be cancelled. This decision will be based on logistical and practical implications as well as the issue of the unavailability of any person with familiarity with the program who can be designated as the **Person in Day-to-Day Charge/Responsible Person**. While a **Person with Management or Control** can legally be present as the **Responsible Person**, our Executive Committee Members would not have adequate familiarity with the management of the program to advise relief staff.

\*Emergency situations are unforeseen. In such circumstances the **Nominated Supervisor** and **Persons with Management or Control** will endeavour to ensure that there is always a **Responsible Person** present and that ratios are maintained – adult:child (if required teacher/educator:child ratio is not possible due to the emergency). The details of such situations will always be reported to the Regulatory Authority (DET) as soon as practicable, during or after the situation, and the aim will always be to remain compliant with the *Education and Care Services National Law and Regulations*.

The Approved Provider or a Nominated Supervisor may appoint a person to be in day-to-day charge of a service if they meet certain requirements (see person in day to-day charge of a service below).

### **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
  - 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, suspend, 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 teacher or 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**

Attachment 1: Person with Management or Control, Responsible Person, Person in Day-to-Day Charge – information sheet

Attachment 2: Person in Day-to-Day Charge of Bundoora Pre-school: Compliance History and Declaration Agreement

## **AUTHORISATION**

This policy was adopted by the Approved Provider of Bundoora Pre-school on 18 October 2018

**REVIEW DATE:   OCTOBER 2021**

## Attachment 1



**PERSON WITH MANAGEMENT OR CONTROL**

**RESPONSIBLE PERSON**

**PERSON IN DAY-TO-DAY CHARGE**

Information from the *Guide to the National Quality Framework*.

### Person with management or control:

In relation to an education and care service, means:

- **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**

At Bundoora Pre-school the Executive Committee members who will be named as Persons with Management or Control will be the:

President, Vice President, Treasurer and Secretary

### 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 (National Law).

**The Approved Provider must ensure that a Responsible Person is present at a centre-based service at all times that the service is educating and caring for children.**

**A responsible person is:**

- the Approved Provider or a Person with Management or Control (currently President and Treasurer. From 2019 – President, Vice President, Treasurer or Secretary. The Persons with Management or Control must have a WWCC, Police Check (or VIT) and be advised to DET via the NQAITS)
- a Nominated Supervisor
- a person in day-to-day charge of the service

All Bundoora Pre-school Staff (excluding Administration Staff) will complete and sign the attached form: *PERSON IN DAY-TO-DAY CHARGE OF BUNDOORA PRE-SCHOOL: COMPLIANCE HISTORY AND DECLARATION OF AGREEMENT* so that they can assume the role of Responsible Person when necessary.

### Person in day-to-day charge:

#### 4.1.3 PERSON IN DAY-TO-DAY CHARGE OF A SERVICE

National Law & Regulations Sections 5(1), 162 Regulation 117A. 117B

The Approved Provider or a Nominated Supervisor may place a person in day-to-day charge (PIDTDC) of a service.

A PIDTDC of the service is the point of contact for parents and staff and must meet **minimum requirements** to be appointed to the role (see below).

The person must give written consent to being a PIDTDC (see form attached).

If a person was previously a certified supervisor, and they provided their written consent to be in day to day charge of a service, they can be taken to have provided written consent to being a PIDTDC.



In this instance, the person does not need to provide written consent to being a PIDTDC, unless the person stopped being a certified supervisor in day to day charge of the service before supervisor certificates were removed from the National Law and Regulations on 1 October 2017.

A PIDTDC is a Responsible Person under section 162 of the Law. **A service does not need to have a PIDTDC if a Nominated Supervisor or Approved Provider is the responsible person at the service** (see Responsible Person).

**Being in day-to-day charge of a service does not place any additional legal responsibilities on a person under the National Law.** For example, where an educator becomes a PIDTDC, the responsibilities relevant to educators under the National Law continue to apply. A person's legal responsibilities do not increase because they consent to being a PIDTDC.

### Minimum requirements for person in day-to-day charge

A person must be at least 18 years of age to be placed in day-to-day charge of a service. Before placing a person in day-to-day charge, the Approved Provider or a Nominated Supervisor must take reasonable steps to ensure that the person:

- 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

The Approved Provider or the Nominated Supervisor must have regard to:

- has a satisfactory history of compliance with— – the National Law – a former education and care services law – a children's services law – an education law
- any decision under the 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.

### Guidance for approved providers and nominated supervisors for placing a person in day-to-day charge

An Approved Provider must assess if a person meets the minimum requirements (above) before they place the person in day-to-day charge.

The Approved Provider should also consider if the person has adequate knowledge and understanding of the provision of education and care and the ability to effectively supervise and manage a service (see below).

### Adequate knowledge and understanding

The approved provider should consider the person's qualifications, skills, work experience and **familiarity with the service** in determining if the person has adequate knowledge and understanding of the provision of education and care of children.

The approved provider may consider the following types of evidence against this requirement:

- 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/s 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 satisfy the provider or nominated supervisor that the person has adequate knowledge and understanding of the provision of education and care to children
- other types of evidence that demonstrate adequate knowledge and understanding.

### Ability to effectively supervise and manage an education and care service

Under the National Regulations a person in day-to-day-charge 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 or Nominated Supervisor may determine the person has the required ability if they have management experience at other service types, or in related sectors. The Approved Provider or Nominated Supervisor 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 and nominated supervisors may consider the following types of evidence for this requirement, as well as any other type of evidence that satisfies them 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 supervision and management abilities
- 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.

### **Child protection**

Each Nominated Supervisor and person in day-to-day charge must have completed the child protection training (if any) required in their state or territory. See Quality Area 2 – Children's Health and Safety for more information on child protection training.

### **Record keeping**

Information used to assess a person's suitability to be placed in day-to-day charge should be kept as evidence on file. This may include records of reference checks, declarations, copies of qualifications or course completion certificates. If the prospective person in day-to-day charge is a new employee to the service, the provider should conduct thorough checks of the person's references, including their current and previous employers. Each referee should be asked if they are aware of any compliance action under the National Law or any other law in relation to the candidate. Referee responses should be recorded and kept on file. This evidence will help demonstrate that the approved provider has taken reasonable steps to comply with requirements under the National Law. This evidence does not need to be submitted to the regulatory authority.

After placing a person in day-to-day charge Approved Providers and Nominated Supervisors should consider any changes to a person's circumstances which affect their suitability to be a person in day-to-day charge. If the approved provider or nominated supervisor becomes aware of a matter or incident which affects the ability of the person in day-to-day charge to meet the minimum requirements for that position, they should consider if it is appropriate to remove the person from this position. For example, if the provider becomes aware the person has had compliance action against them, they should reassess if that person is still suitable to be in charge.





## PERSON IN DAY-TO-DAY CHARGE OF BUNDOORA PRE-SCHOOL COMPLIANCE HISTORY AND DECLARATION OF AGREEMENT

**1. Please provide information about any compliance action or disciplinary proceeding to which you have been subject under:**

- the *Education and Care Services National Law*, including the *Education and Care Services National Regulations*, and
  - any of the laws listed at Table 1 below, in any Australian state or territory.
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**2. Were you issued a supervisor certificate prior to supervisor certificates being removed from the National Law and Regulations on 1 October 2017.**

Yes Certified Supervisor Number \_\_\_\_\_  No

**3. Have you completed Child Protection Training, which is a requirement of being named as Person in Day-to-Day Charge?**

Yes Course Name \_\_\_\_\_ Date completed \_\_\_/\_\_\_/\_\_\_  No

**4. Have you ever had a supervisor certificate that was subject to any conditions or suspended or cancelled by the Regulatory Authority (DET)?**

- No
- Yes - please provide details
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**5. Are you or have you every been subject to a prohibition notice under the Education and Care Services National Law?**

- No
- Yes - please provide details
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**6. Have you ever held or applied for a licence, approval, registration, certification or other authorisation under the National Law which the Regulatory Authority (DET) refused, refused to renew, suspended or cancelled?**

- No
- Yes - please provide details
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I, [insert full name] \_\_\_\_\_ Of [insert address] \_\_\_\_\_

and born on [insert date of birth] \_\_\_/\_\_\_/\_\_\_ declare that

- the information provided in this statement is true and complete, and
- I am aware that I may be subject to penalties under a Commonwealth or State or Territory Act if I provide false or misleading information.
- I agree to be named as a person in day-to-day charge of Bundoora Pre-school, when deemed necessary, and understand that a person in day-to-day charge is also designated as a Responsible Person under the *Education and Care Services National Law Act and Regulations*.

Signature of person making the declaration:

Signed: \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_