



2.5 Determining the Responsible Person Present

Purpose

The *Education and Care Services National Regulations* require John Street to have in place policies and procedures in relation to determining the Responsible Person present at the service.

Objective

To ensure that a Responsible Person is physically present at John Street at all times that the service operates.

Definitions

Approved Provider - An individual or organisation that has completed an application form and, having been assessed by the Regulatory Authority as fit and proper, has been granted *provider approval* (in accordance with Part 2 of the National Law) to operate one or more education and care services.

Competent Person – a person who the Approved Provider has deemed to be Competent.

Competent – someone who is a fit and proper person to act as a Responsible Person in connection with John Street’s service. This includes being over the age of 18, holding a valid working with children check, meeting minimum qualification requirements, experience and management capability, and demonstrates a history of involvement in education and care services and compliance with current and previous education and care services law, children’s service law or education law.

Director – means the Director of John Street (or where there is more than one director, any one of them)

National Law – means the Education & Care Services National Law Act 2010.

Nominated Supervisor – a person who is a Competent Person, has been nominated to act as Nominated Supervisor by the Approved Provider and who has consented to that nomination.

Responsible Person – the person who is physically present at the centre and responsible for its operation during the relevant period; this could be

- the Approved Provider (or person with management or control)

- a Nominated Supervisor; or
- a Person In Day-To-Day Charge.

Person in Day-to-Day Charge – a person who is a Competent Person, has been approved to act as a Person in Day-to-Day Charge by the Approved Provider and who has consented to that appointment.

2IC – Second In Command of the centre.

Scope of Policy

This policy applies to the Board, Director, 2IC, staff members and educators at John Street.

Policy Statement

It is a requirement of the Education and Care Services National Law that a Responsible Person is physically present at John Street at all times that John Street is in operation.

The Board nominates the Director to be the Nominated Supervisor for John Street, which is documented in John Street's provider approval to operate an education and care service for children, signed by the Board. Therefore, the Director will ordinarily be the Responsible Person at John Street.

Whilst the Director ordinarily assumes management control of John Street, from time to time when the Director is not available, procedures must be implemented to ensure that obligation under the National Law to have a Responsible Person present is met at all times. Those procedures are set out in this policy.

Procedures relating to the Responsible Person

- A Responsible Person must be physically present and in charge at all times John Street is in operation.
- The name and position of the Responsible Person in charge of John Street at any given time will be displayed so that it is easily visible to anyone from the main-entrance.
- Given that the Responsible Person in charge may change throughout the day (e.g. changeover of shifts) the requirement to display the name and position of the Responsible Person in charge will be met by providing this information and a photo of the Responsible Person at the time in the main entrance of the foyer.
- The Responsible Person in charge at John Street is the Director, when the Director is physically present.
- If the Director is not physically present at John Street for any period of time, the 2IC is the Responsible Person for that time, if the 2IC is a Nominated Supervisor or Person In Day-to-Day Charge.

- If the Director and the 2IC are absent, a Person in Day-to-Day Charge will be appointed as the Responsible Person in charge of John Street for that period of time.

Responsibilities of the Nominated Person

As the person with responsibility for the day-to-day management of John Street, the Nominated Supervisor has a range of responsibilities 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, and designed to take into account the individual differences of each child
Supervision and safety of children	Ensuring children are adequately supervised, are not subject to inappropriate discipline, and are protected from harms and hazards
Entry to and exit from the premises	<p>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)</p> <p>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 Law, or the supervisor is aware the parent is prohibited by a court order from having contact with the child</p> <p>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</p>
Food and beverages	<p>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</p> <p>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</p> <p>Ensuring that, where food and beverages are supplied by the service, they are nutritious and adequate in quantity, and chosen with regard to the dietary requirements of individual children</p> <p>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</p>

Administration of medication	<p>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</p> <p>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</p>
Prescription and non-prescription of drugs and alcohol	<p>That while educating and caring for children at the service, they 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</p>
Sleep and rest	<p>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</p>
Excursions	<p>Ensuring that a risk assessment is conducted before an excursion in accordance with the National Regulations, and specifically that the risk assessment is conducted before authorisation is sought to take a child on the excursion</p>
Staffing	<p>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.</p>

Process for approval of Persons In Day-to-Day Charge

Introduction

Educators at John Street are eligible to apply to be a Person In Day-to-Day Charge, which will then mean they are eligible to be the Responsible Person in day-to-day charge in the absence of the Nominated Supervisor and 2IC.

Process for assessment of Competency

Educators at John Street who wish to be considered as a Person In Day-to-Day Charge will be assessed by the Approved Provider to check whether they are Competent for the purposes of this policy.

The process for assessment of Competency and approval to act as a Person In Day-to-Day Charge is as follows:

1. The educator (**Applicant**) should inform the Director that they would like to apply for approval as a Person In Day-to-Day Charge.

2. The Applicant will be asked to demonstrate their competency in a range of areas, as outlined in Appendix 1 (summarised below).
3. If the Director is satisfied that the Applicant has demonstrated they are Competent, the Director will record that the application has been 'Approved'.
4. The Applicant will be asked to provide written consent confirming:
 - a. They agree to be a Person In Day-to-Day Charge; and
 - b. They agree to act as the Responsible Person if asked to do so from time to time.

Competency criteria

To be Competent, an Applicant will need to demonstrate:

- They are 18 years or older.
- They have adequate knowledge and understanding of the provision of education and care to children.
- They have successfully completed Child Protection Training, if required by the Victoria's regulating authority
- They have the ability to effectively supervise and manage an education and care service.
- A knowledge of:
 - *The Education and Care Services National Law Act 2010, and the Education and Care Services National Regulations 2011*
 - Equal Opportunity Employment Conditions and the *Professional Child Care Standards 2012*
 - Health and Safety, including Child Protection responsibilities
 - Privacy, Confidentiality and Equal Opportunity/Anti-Discrimination policies and procedures
 - John Street Community Early Childhood Cooperative's policies and procedures.

In assessing whether an Applicant is Competent, the Approved Provider or the Nominated Supervisor must have regard to:

- The person's history of compliance with the National Law and other relevant laws.

- Any decision under the Law to refuse, suspend, refuse to renew, or cancel a licence, approval, registration, certification or other authorisation granted to the person under the National Law and other relevant laws.

Changes to the law relating to appointment of a Nominated Supervisor

Please note that the law relating to appointing a Responsible Person changed on 1 October 2017, due to amendments to the National Law.

From that date, concepts of ‘certified supervisors’ and ‘supervisor certificates’ were removed from the National Law, to reduce red tape for Approved Providers.

Under the new law, the Approved Provider has the discretion to appoint its staff as a Nominated Supervisor (and therefore able to act as a Responsible Person), provided it is satisfied they are Competent. The process for assessing competency and recording the staff member’s consent to acting as Nominated Supervisor are set out in Appendices 1 and 2.

Responsibility

It is the responsibility of the Board and the Director to ensure that this policy is actively implemented. The 2IC and other educators may have additional responsibilities in the absence of the Director in implementing this policy.

A Person In Day-To-Day Charge, acting as Responsible Person, are not the equivalent of a nominated supervisor and do not have the same responsibilities under the National Law as a Nominated Supervisor.

Legislative Provisions

Education & Care Services National Law Act 2010 – Sections 5, 44, 56, 161, 162 & 172

Education and Care services National Regulations:

r.35	Notification of change to nominated supervisor
r.146	Nominated Supervisor
r.168	Education and Care Service must have policies and procedures
r.173	Prescribed information to be displayed

National Quality Standard for Early Childhood Education and Care & School Age Care

Element 2.1.1	<i>Each child’s wellbeing and comfort is provided for, including appropriate opportunities to meet each child’s need for sleep, rest and relaxation.</i>
Element 2.1.2	<i>Effective illness and injury management and hygiene practices are promoted and implemented.</i>
Element 2.2.1	<i>At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard.</i>
Element 2.2.3	<i>Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse or neglect.</i>

Element 7.1.2	<i>Systems are in place to manage risk and enable the effective management and operation of a quality service.</i>
Element 7.1.3	<i>Roles and responsibilities are clearly defined, and understood, and support effective decision-making and operation of the service.</i>
Element 7.2	<i>Effective leadership builds and promotes a positive organisational culture and professional learning community</i>

Sources

Australian Children’s Education and Care Authority, *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011*, version dated February 2017 accessed via <https://www.acecqa.gov.au/sites/default/files/2018-01/NQF-Resource-02-Guide-to-ECS-Law-Regs.pdf>.

Australian Children’s Education and Care Authority, , *Guide to Responsible Person Requirements for Approved Providers* (from 1 Oct 2017) , published 30 August 2017, accessed via https://www.acecqa.gov.au/sites/default/files/acecqa/files/NQF/ResponsiblePersonRequirements_2.pdf.

Related John Street Policies, Procedures and Guidelines

Policies	<i>Centre-wide Code of Conduct; Child Safe Standards Policy; Code of Professional Conduct; Communication with Families</i>
Appendix	<i>Application Questions for appointment as Person In Day-To-Day Charge (includes consent form to record consent of individual to act as Person In Day-To-Day Charge and Responsible Person)</i>

Authorisation

This policy was approved by the John Street Board in July 2018.