

the Y Ballarat – Determining Responsible Person Policy

Policy Number	Date Approved	Date Last Amended	Status
CP012-PO	01/07/2020		FINAL

1. PURPOSE

This policy will provide guidelines to assist in determining the Responsible Person at Ballarat YMCA Children's Services (YMCA).

2. SCOPE

The scope of this Policy applies to all Board members, Sub Committee members, staff and volunteers. This policy applies to The Young Men's Christian Association of Ballarat Inc and related entities and the Ballarat YMCA Youth Services. For the purposes of this document we refer to these as the YMCA. All Procedures must conform to this Policy.

3. POLICY

YMCA 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

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 is present.

Legislation requires that centre-based services have a Responsible Person physically in attendance at all times the service is educating and caring for children. The Responsible Person is the person in day to day charge at the service and can be either:

- the Approved Provider (or the person in management or control of the service),
- the Nominated Supervisor of the service, or
- a Certified Supervisor 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 Certified Supervisor is to be placed in charge, ensuring there is always someone on the service premises who has been assessed as fit and proper.

Regulatory Authorities will issue a service supervisor certificate (refer to Definitions) for each approved education and care service and the service can decide who will be the Certified Supervisor/s at the service. To be covered by the service supervisor certificate a person needs to be:

- responsible for the day-to-day management of the service; or
- exercising supervisory and leadership responsibilities for part of the service.

People who hold an individual supervisor certificate can also be placed in day-to-day charge of the service. It is important to note that a Certified Supervisor 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 at the centre-based service for each time that children are being educated and cared for by the service (Regulation 150).

4. ROLES AND RESPONSIBILITIES

Department/Role	Responsibility
Children's Services Manager	<p>The Children's Services Manager is responsible for the development, monitoring and review of the procedure and related systems, ensuring content meets all legislated requirements.</p> <p>Facilitate annual procedure training to Children's Services educators on the appropriate implementation and use of policy.</p>
Children's Services Team	<p>The Y Ballarat nominated supervisors and/or service management will oversee the implementation and service adherence to this policy (ie procedure compliance).</p> <p>Nominated supervisor and/or person with management and control will seek individual community feedback and facilitate an active consultation process with service users as appropriate.</p> <p>All educators will be provided with this policy annually and are responsible for the daily implementation of the procedure when directly supervising children.</p>
Managers and Directors	<p>Responsible for addressing any instance of non-compliance with this policy and implementing strategies to help prevent noncompliance with this policy.</p> <p>Responsible for implementing the processes outlined in this procedure, in accordance with this policy, as required.</p> <p>Is responsible for ensuring suitable resources and support systems to enable compliance with this policy</p>

	Drive the consultation process and provide leadership and advice on the continuous improvement of the policy
All employees, volunteers & students.	Responsible for meeting the requirements outlined in this policy. Responsible for raising concerns or complaints in accordance with this policy

5. DEFINITIONS

Term	Definition
Approved Provider	An individual or organisation that has completed an application 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. Where the applicant is an organisation, each person with management and control of that organisation must complete a separate application form. (Note: Under the Education and Care Services National Law Act 2010, Section 5, Definitions: “person with management or control, in relation to an education and care service, means – (b) 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”.)
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
Certified Supervisor	An educator who has been nominated by the Approved Provider or the Nominated Supervisor of a service (in accordance with the National Regulations), and consents in writing to being placed in day-to-day charge of the education and care service. A Certified Supervisor can be any person engaged to be responsible for the day-to-day management of the service, or with supervisory and leadership responsibilities at the service. Any person placed in day-to-day charge of the service must be assessed as a fit-and-proper person (refer to Definitions) and have suitable skills, qualifications and experience as determined by the service. Individual supervisor certificates are also still valid. A Certified Supervisor placed in day-to-day charge of a service does not have the same responsibilities under the National Law as the Nominated Supervisor.
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	In determining whether an applicant is fit and proper, the Regulatory Authority 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. The Regulatory Authority may reassess fitness and propriety at any time. Applicants are required to complete the Declaration of Fitness and Propriety form on the ACECQA website and have this approved by the Regulatory Authority. This form must be completed by an individual provider applicant or in the case of an entity provider applicant, each person with management or control of a service. The form is available at: http://acecqa.gov.au/application-forms/provider-approvals/ (Note: Under the Education and Care Services National Law Act 2010, Section 5, Definitions: "person with management or control, in relation to an education and care service, means – (b) 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".).
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 with responsibility for the service in accordance with the National Regulations. The Approved Provider must take reasonable steps to ensure the Nominated Supervisor is a fit and proper person (refer to Definitions), with suitable skills, qualifications and experience. The Regulatory Authority must be notified if the Nominated Supervisor for the service changes or is no longer employed at the service.
Supervisor Certificate	A supervisor certificate is provided to each centre-based service by the Regulatory Authority. The Approved Provider can nominate a person or persons to be the Certified Supervisor (refer to Definitions) at the service without requiring Departmental approval or paying a fee. Individual supervisor certificates are still valid, however most individuals no longer need to apply.
Responsible Person	The Approved Provider (if that person is an individual, and in any other case the person with management or control of the service operated by the Approved Provider) or a Nominated Supervisor or Certified Supervisor who has been placed in day-to-day charge of the service in accordance with the National Regulations.

6. LEGISLATIVE AND INDUSTRY REQUIREMENTS

Related Legislation -

Relevant legislation and standards include but are not limited to:

- *Education and Care Services National Law Act 2010: Sections 5, 44, 56, 106–109, 114, 115, 118, 161, 162, 164, 172, 291(5)*
- *Education and Care Services National Regulations 2011: Regulations 35, 46–50, 146, 150, 168(2)(i)(ii), 173, 176(2)(c)*
- *National Quality Standard, Quality Area 4: Staffing Arrangements*
- *National Quality Standard, Quality Area 7: Leadership and Service Management Standard*

7. SUPPORTING DOCUMENTS

- 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
- Guide to the National Quality Standard: www.acecqa.gov.au

Service policies

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

8. Approval and Review

Approved By: Executive Management Group
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Procedure Owner: Alicia Pratt OSHC Manager
Carina O'Neil Early Years Manager

Amendments

Version	Date	Author	Change Description
V1	July 2020	Alicia Pratt	Minor Amendments