



## Responsible Person in Charge Policy and Procedures

<b>Policy Number:</b>	2020/49
<b>Approved by:</b>	Heritage Management Committee – 8 December 2020
<b>Last reviewed:</b>	August 2020
<b>Next review due:</b>	2023
<b>National Law &amp; Regulations</b>	National Law: Part 6, Operating an Education and Care Service: 56, 161, 161A, 162, 172. Part 14: Infringement Notices: 291(5). National Regulations: 35, 117 (A) (B) (C), 146, 150, 168(2)(i) (ii), 173, 176(2)(c)
<b>National Quality Standard</b>	Quality Area 4: Staffing Arrangements; Quality Area 7: Leadership and Service Management

### Policy Statement

Heritage Early Childhood Centre (Heritage) recognises it has a duty of care and legislative obligation to ensure staffing arrangements contribute to the health, safety, wellbeing, learning and development of all children at the service. It is understood that 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.

The Heritage Approved Provider (Management Committee) oversees the operation of the Heritage service and appoints a Nominated Supervisor (Director) to be in charge of the day-to-day running of the service. The Nominated Supervisor does not have to be in attendance at the service at all times, and in their absence, Heritage will ensure a Responsible Person will be placed in day-to-day charge and on the service premises at all times.

A Responsible Person may be:

- The Approved Provider or a person with management or control
- A Nominated Supervisor
- A person placed in day-to-day charge of the service such as an educator.

Heritage recognises it is responsible for ensuring the safety and wellbeing of all children enrolled at the service and will consider a person's qualifications, experience and age and other the criteria set out in the National Regulations when deciding whether they are suitable to be placed in 'day-to-day charge'.

Details of the Nominated Supervisor or Responsible Person on duty will be clearly displayed at the service entrance.

### Legislative Background

- From October 2017 (1 October 2018, WA), the National Quality Framework (NQF), and specifically the *Education and Care Services National Law Act 2010*, was updated to remove Certified Supervisors and Supervisor Certificates in order to reduce red tape and allow services more autonomy to decide who can be the Responsible Person in each service.
- In addition, it was added that 'one or more' individuals can be appointed as Nominated Supervisors at the service.
- Under the changes, a Responsible Person placed in day-to-day charge of an approved service does not have the same responsibilities under the National Law as the Nominated Supervisor.
- The ACT Regulatory Authority may restrict a person from being a Nominated Supervisor either entirely or subject to conditions, if it considers the person is not fit and proper to be the supervisor of an education and care service. This gives the regulatory authority a level



of oversight over who can be a nominated supervisor, while allowing the approved provider flexibility in making a nomination.

## Definitions

**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.

**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.

**Nominated Supervisor:** A person who has been nominated by the Approved Provider of the service under Part 6 of the *Education and Care Service National Law Act 2010* to be the Nominated Supervisor of that service, and who has consented to that nomination. The Nominated Supervisor has day-to-day responsibility for the service in accordance with the National Regulations. All services must have a Nominated Supervisor.

**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 person who has been placed in day-to-day charge of the service in accordance with the National Regulations.

## Policy Aim

This policy aims to ensure that:

- Heritage meets its legislative obligation to ensure a Nominated Supervisor or Responsible Person is physically in attendance at all times the service is educating and caring for children.
- The person placed in day-to-day charge of the service will be either the Approved Provider (or the person in management or control of the service), the Nominated Supervisor of the service, or a Responsible Person.

## Scope

This policy applies to the Management Committee, Director, Nominated Supervisors, Responsible Persons in Charge, educators, students, volunteers and parents/guardians of Heritage Early Childhood Centre.

## Rationale

Heritage recognises it has a duty of care to take all reasonable, practicable steps to provide the Heritage community with a safe and healthy work environment (*Work Health and Safety Act 2011*). In addition, this policy has been developed to comply with, but not limited to:

- The *Education and Care Services National Law Act (ACT) 2010*. Part 6, 56, 161, 161A, 162, 172. Part 14: 291(5).
- The *Education and Care Services National Regulations (ACT) 2011* 35, 117 (A) (B) (C), 146, 150, 168(2)(i) (ii), 173, 176(2)(c).
- The *National Quality Standard for Early Childhood Education 2011*. Quality Area 4, Standard 4.1; Quality Area 7, Standard 7.1.<sup>1</sup>
- *Working with Vulnerable People (Background Checking) Act 2011 (ACT)*.
- *Working with Vulnerable People (Background Checking) Regulation 2012 (ACT)*.

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<sup>1</sup> Refer to: Appendix 1. Relevant National Law, Regulations and Quality Standards



## Strategies and Practices

### Placing a Person in Day to Day Charge or as a Nominated Supervisor

A person may be placed in day-to-day charge of the service, when:

- The Nominated Supervisor or Responsible Person identifies that they meet the criteria below, required under **Regulation 117B and 117C**.<sup>2</sup>
- They give their written consent to be placed in day to day charge of the service.<sup>3</sup>

### The Management Committee must:

- Notify the ACT Regulatory Authority when a Nominated Supervisor is appointed through the NQA IT System by submitting a Notification of Change to Nominated Supervisor Form.
- Notify the ACT Regulatory Authority 7 days prior to the Nominated Supervisor starting, or if that is not possible, within 14 days after the Nominated Supervisor has commenced in the role (Regulation 176).
- Not nominate a person as a Nominated Supervisor if it was known or could reasonably have known that person was prohibited from being nominated.
- Ensure a review of the performance of the Nominated Supervisor occurs annually, prior to the AGM in March. This may be in the form of a meeting between the Chairperson and the Director and involve reviewing Key Performance Indicators<sup>4</sup> and an audit of the service's compliance with regulations.

### Criteria to be Determined a Responsible Person or Nominated Supervisor

Educators at the service who are considered appropriate for the role of Responsible Person or Nominated Supervisor must meet the following requirements:

- Have demonstrated practical knowledge of the day-to-day responsibilities of being an educator at the service, including how to effectively supervise and manage an education and care service and work through unexpected problems.
- Be over 18 years of age.
- Be aware of child protection laws and obligations and have current Working With Vulnerable People checks that comply with working with vulnerable people laws.
  - **Note:** National Law 162A requires '*the Approved Provider of an education and care service to ensure that each Nominated Supervisor and each person in day-to-day charge of the service has successfully completed the child protection training (if any) required by or under the law of this jurisdiction*'. While there is no specific training requirement in the ACT under *Children and Young People ACT 2008*, Heritage is committed to professional development, ongoing training, and continually updating its resources in child protection to ensure the Heritage community has up to date skills and knowledge.
- A demonstrated understanding of:
  - *Education and Care Services National Law Act 2010*, and the *Education and Care Service National Regulations 2011*
  - Equal Opportunity Employment Conditions
  - Health and Safety, including Child Protection responsibilities
  - Privacy and Confidentiality and Inclusion and Equity responsibilities.
  - All Heritage policies and procedures.
- Consideration of the person's history of compliance with the National Law and other relevant laws.
- Consideration of any decision 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.
- **Candidates will be asked to submit a Compliance History Statement.**<sup>5</sup> Note: The statement is not mandatory but can help make informed decisions about a person's

<sup>2</sup> Refer to Appendix 1: Relevant National Law, Regulations and Quality Standards

<sup>3</sup> Refer to: [https://www.acecqa.gov.au/sites/default/files/2018-09/NS01\\_NominatedSupervisorConsentForm.pdf](https://www.acecqa.gov.au/sites/default/files/2018-09/NS01_NominatedSupervisorConsentForm.pdf)

<sup>4</sup> Refer to: Director's Duty Statement; Employment and Staffing Policy

<sup>5</sup> Refer to: <https://www.acecqa.gov.au/resources/applications/sample-forms-and-templates>



suitability to be the Nominated Supervisor or to be placed in day-to-day charge of the service.

#### **Additional steps that may be taken by the Management Committee to ensure a Nominated Supervisor is not prohibited include:**

- Asking the candidate to and sign a Prohibition Notice Declaration for prospective staff members declaring they are not prohibited.<sup>6</sup>
- Review the candidate's references, including previous employers.
- When undertaking reference checks, ask each referee if they are aware of any compliance action under the National Law or any other law in relation to the candidate. Record referee responses and keep this information on file.
- If, after taking reasonable steps, there is a concern about the candidate's compliance history, contact the ACT Regulatory Authority and enquire if the person is subject to a prohibition notice in any state or territory.
- If a matter or incident occurs which affects the ability of the Nominated Supervisor to meet the minimum requirements, the Management Committee must consider if it is appropriate to remove them as Nominated Supervisor.<sup>7</sup>

#### **Maintaining Records**

- Records will be kept with sufficient evidence of the suitability of the Nominated Supervisors or Responsible Persons in Charge in order to demonstrate to the ACT Regulatory Authority that reasonable steps have been taken to comply with the relevant obligations under the National Law.
- These records will be reviewed annually by the Management Committee, such as during the Director's annual review and prior to the AGM.

#### **Summary of Responsibilities**

Role	Responsible for:
<b>Management Committee</b>	<ul style="list-style-type: none"> <li>• Ensuring that, in the absence from the service premises of a Nominated Supervisor, procedures are in place to ensure a Responsible Person is placed in day-to-day charge of the service and on the premises at all times whenever the service is delivering education and care programs for children.</li> <li>• Ensuring that the name and position of the Nominated Supervisor or Responsible Person in charge of the service is displayed and easily visible from the main entrance of the service (National Law: Section 172).</li> <li>• Notifying the ACT Regulatory Authority in writing if there is a change of person in the role of Nominated Supervisor (National Law, Section 56, Regulation 35).</li> <li>• Maintaining records with suitability information relating to each Nominated Supervisor (Regulation 146).</li> <li>• Ensuring the Chairperson meets with the Director annually to review the performance of the Nominated Supervisor annually, prior to the AGM, including ensuring the service's compliance with regulations.</li> <li>• Ensuring procedures are in place to maintain records relating to the Responsible Person in Charge (Regulation 150) for each time that children are being educated and cared for by the service, and these are audited annually.</li> </ul>
<b>Director/ Nominated Supervisor</b>	<ul style="list-style-type: none"> <li>• Providing written consent to accept the role of Nominated Supervisor.</li> <li>• Ensuring that, in their absence from the service premises, a Responsible Person is placed in day to day charge of the service.</li> <li>• Ensuring they have a sound understanding of the role of Responsible Person.</li> </ul>

<sup>6</sup> Refer to: <https://www.acecqa.gov.au/resources/applications/sample-forms-and-templates>

<sup>7</sup> Refer to: Employment and Staffing Policy



	<ul style="list-style-type: none"> <li>• Ensuring that a person placed in day-to-day charge (Responsible Person) in their absence has appropriate knowledge, understanding, skill levels, experience, qualifications and approval to work with children, as required under the National Law and National Regulations.</li> <li>• Ensuring that the name and position of the Nominated Supervisor or Responsible Person in charge of the service is displayed and easily visible from the main entrance of the service (National Law: Section 172). (Note: The Responsible Person may change throughout the day (for example, at a changeover of shifts), and this requirement may be met on a whiteboard or interchangeable name plate at the entrance).</li> <li>• Maintaining records relating to the Responsible Person including the name of the Responsible Person for each time that children are being educated and cared for by the service (Regulation 150).</li> <li>• Developing rosters in accordance with the availability of Responsible Persons, hours of operations and the attendance patterns of children.</li> <li>• Notifying the Management Committee and the ACT 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 Vulnerable People (WWVP) registration or teacher registration, or if they are subject to disciplinary proceedings.</li> </ul>
<b>Responsible Person</b>	<ul style="list-style-type: none"> <li>• Providing written consent to accept the role of Responsible Person.</li> <li>• Checking 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.</li> <li>• Ensuring they have a sound understanding of the role of Responsible Person.</li> <li>• Understanding that a Responsible Person placed in day to day charge of an approved service does not have the same responsibilities under the National Law as the Nominated Supervisor.</li> <li>• Informing the Nominated Supervisor in the event of absence from the service due to leave or illness so they can be replaced by another Responsible Person.</li> <li>• Notifying the Nominated Supervisor of any changes to their personal situation, including a change in mailing address or circumstances such as the suspension or cancellation of a Working with Vulnerable People (WWVP) registration or teacher registration, or if they are subject to disciplinary proceedings.</li> </ul>
<b>Families</b>	<ul style="list-style-type: none"> <li>• Reading and understanding this policy.</li> <li>• Being aware of the Nominated Supervisor or Responsible Person in Charge at the service on a daily basis.</li> </ul>

### Monitoring, Evaluation and Review

- This policy will be monitored to ensure compliance with its' aims and legislative requirements.
- This policy will be regularly reviewed as part of the service policy review cycle and when deemed necessary through the identification of practice gaps or legislative changes.
- Families and staff will be given opportunity and encouragement to be actively involved in the policy review process.
- In accordance with Regulation 172, Heritage will ensure families of children enrolled at the service are notified at least 14 days before making any change to a policy or procedure that may have significant impact on the provision of education and care to any child enrolled at the service; a family's ability to utilise the service; the fees charged or the way in which fees are collected.



## Related Policies

Name	Location
Child Protection Policy	Policy and Procedures
Employment and Staffing Policy	Manual in Office, Main Entrance and Staff
Heritage Code of Conduct/Ethics Policy	Programming Room.
Privacy and Confidentiality Policy	Members Area of Heritage
Supervision and Water Safety Policy	Website

## References and Further Reading

### Legislative References

**Australian Children's Education and Care Quality Authority (ACECQA). (2018).** *Guide to the National Quality Framework.*

[https://www.acecqa.gov.au/sites/default/files/2018-03/Guide-to-the-NQF\\_0.pdf](https://www.acecqa.gov.au/sites/default/files/2018-03/Guide-to-the-NQF_0.pdf)

**Australian Government Department of Education, Employment and Workplace Relations. (2009).** *Belonging, Being & Becoming, the Early Years Learning Framework for Australia*

[https://www.acecqa.gov.au/sites/default/files/2018-](https://www.acecqa.gov.au/sites/default/files/2018-02/belonging_being_and_becoming_the_early_years_learning_framework_for_australia.pdf)

[02/belonging\\_being\\_and\\_becoming\\_the\\_early\\_years\\_learning\\_framework\\_for\\_australia.pdf](https://www.acecqa.gov.au/sites/default/files/2018-02/belonging_being_and_becoming_the_early_years_learning_framework_for_australia.pdf)

**Education and Care Services National Law Act 2011 (ACT).** *Effective: 1 January 2018.*

<http://www.legislation.act.gov.au/a/2011-42/current/pdf/2011-42.pdf>

**Education and Care Services National Regulations 2011 (ACT).** *Current Version 1 Feb 2018.*

<https://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

### Other References

**Australian Children's Education and Care Quality Authority (ACECQA). (2017).**

Responsible Person Requirements for Approved Providers.

<https://www.acecqa.gov.au/sites/default/files/2018-09/ResponsiblePersonRequirements.pdf>

**Australian Children's Education and Care Quality Authority (ACECQA).** Compliance

History Statement Template for a Person to be in Day to Day Charge or a Nominated

Supervisor. [www.acecqa.gov.au/resources/applications/sample-forms-and-templates](http://www.acecqa.gov.au/resources/applications/sample-forms-and-templates)

**Community Early Learning Australia (CELA).** (2018). *Sample Policy: Responsible Person in Charge.* [https://www.cela.org.au/resource\\_category/sample-required-policies/](https://www.cela.org.au/resource_category/sample-required-policies/)

## Version Control and Change History

	Approval Date	Approved by	Author and Amendments
1	8 December 2020	Heritage Management Committee	Author: Julia Charters  New policy to better meet requirements of the National Law and Regulations.  Previously part of Employment and Staffing Policy.





## Appendix 1: Relevant National Law, National Regulations and Quality Standards

### **National Law, PART 6:**

#### **SECTION 56: Notice of addition of nominated supervisor**

(1) The approved provider of an education and care service must give written notice to the Regulatory Authority in accordance with this section if the approved provider wishes to add a new nominated supervisor of the education and care service.

(2) The notice must--

(a) nominate one or more individuals to be nominated supervisors of the service and, unless the individual nominated is the approved provider, include from each nominated individual the written consent to the nomination; and

(b) include the prescribed information; and

(c) be given--

(i) at least 7 days before the individual is to commence work as a nominated supervisor; or

(ii) if that period of notice is not possible in the circumstances, as soon as practicable but not more than 14 days after the individual commences work as a nominated supervisor.

Note : Section 173(2)(b) requires an approved provider to notify the Regulatory Authority of the removal of a nominated supervisor.

#### **SECT 161: Offence to operate education and care service without nominated supervisor**

The approved provider of an education and care service must not operate the service unless there is at least one nominated supervisor for that service.

#### **SECT 161A: Offence for nominated supervisor not to meet prescribed minimum requirements**

The approved provider of an education and care service must not nominate an individual to be a nominated supervisor of that service unless that individual meets the prescribed minimum requirements for nomination as a nominated supervisor.

#### **SECT 162: Offence to operate education and care service unless responsible person is present**

(1) The approved provider of an education and care service must ensure that one of the following persons is present at all times that the service is educating and caring for children--

(a) the approved provider, if the approved provider is an individual or, in any other case, a person with management or control of an education and care service operated by the approved provider;

(b) a nominated supervisor of the service;

(c) a person in day-to-day charge of the service.

#### **SECT 172: Offence to fail to display prescribed information**

172 Offence to fail to display prescribed information

An approved provider of an education and care service must ensure that the prescribed information about the following is positioned so that it is clearly visible to anyone from the main entrance to the education and care service premises--

(a) the provider approval;

(b) the service approval;

(c) each nominated supervisor of the service;

(d) the rating of the service;

(e) any service waivers or temporary waivers held by the service;

(f) any other prescribed matters.

### **National Regulations**

#### **Regulation 35**

Notice of addition of new nominated supervisor A notice under section 56 of the Law to add a new nominated supervisor of an education and care service must include the following information—

(a) the name of the education and care service;



- (b) the service approval number;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the full name and contact details of the new nominated supervisor;
- (e), (f) (Repealed)
- (g) the date on which the new nominated supervisor commences or commenced work as a nominated supervisor. Note. A notice must include a nominated supervisor's written consent to the nomination unless the nominated supervisor is the approved provider—see section 56(2)(a) of the Law.

**Regulation 117A: Placing a person in day-to-day charge**

For the purposes of the definition of a person in day-to-day charge in section 5(1) of the Law, a person is in day-to-day charge of an education and care service if—

- (a) the person is placed in day-to-day charge by the approved provider or a nominated supervisor of the education and care service; and
- (b) the person consents to the placement in writing.

**Regulation 117B: Minimum requirements for a person in day-to-day charge**

(1) An approved provider or a nominated supervisor of an education and care service must not place a person in day-to-day charge unless—

- (a) the person has attained the age of 18 years; and
- (b) the approved provider or nominated supervisor (as the case requires)—
  - (i) has had regard to the matters set out in subregulation (2); and
  - (ii) has taken reasonable steps to ensure that the person has adequate knowledge and understanding of the provision of education and care to children and an ability to effectively supervise and manage an education and care service.

(2) For the purposes of subregulation (1)(b)(i), the matters are—

- (a) the person's history of compliance with—
  - (i) the Law as applying in any participating jurisdiction; and
  - (ii) a former education and care services law of a participating jurisdiction; and
  - (iii) a children's services law of a participating jurisdiction; and
  - (iv) an education law of a participating jurisdiction; and
- (b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under—
  - (i) the Law as applying in any participating jurisdiction; and
  - (ii) a former education and care services law of a participating jurisdiction; and
  - (iii) a children's services law of a participating jurisdiction; and
  - (iv) an education law of a participating jurisdiction.

**Regulation 117C: Minimum requirements for a nominated supervisor**

(1) For the purposes of section 161A of the Law, the prescribed minimum requirements for nomination of a person as a nominated supervisor of an education and care service are that the person must--

- (a) have attained the age of 18 years; and
- (b) have adequate knowledge and understanding of the provision of education and care to children; and
- (c) have the ability to effectively supervise and manage an education and care service.

(2) In determining whether to nominate a person as a nominated supervisor, an approved provider of an education and care service must have regard to the following matters--

- (a) the history of the person's compliance with--
  - (i) the Law as applying in any participating jurisdiction; and
  - (ii) a former education and care services law of a participating jurisdiction; and
  - (iii) a children's services law of a participating jurisdiction; and
  - (iv) an education law of a participating jurisdiction;
- (b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under--
  - (i) the Law as applying in any participating jurisdiction; and
  - (ii) a former education and care services law of a participating jurisdiction; and





- (iii) a children's services law of a participating jurisdiction; and
- (iv) an education law of a participating jurisdiction.

**Regulation 146: Nominated supervisor**

The staff record must include the following information in relation to each nominated supervisor—

- (a) the full name, address and date of birth of the nominated supervisor;
- (b) evidence—
  - (i) of any relevant qualifications held by the nominated supervisor; or
  - (ii) if applicable, that the nominated supervisor is actively working towards that qualification as provided under regulation 10;
- (c) evidence of any approved training (including first aid training) completed by the nominated supervisor;
- (d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies;
- (e) if the nominated supervisor is a teacher registered under an education law of a participating jurisdiction and has provided proof of that registration, a record of the identifying number of the teacher registration and the expiry date of that registration;
- (f) in relation to Tasmania, a record of the identifying number of the nominated supervisor's working with vulnerable people registration and the expiry date of that registration.

**National Regulation 150: Responsible person**

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 168: Policies and Procedures are required in relation to staffing, including**

- (i) a code of conduct for staff
- (ii) determining the responsible person present at the service

**Regulation 173: Prescribed information to be displayed**

(1) For the purposes of section 172 of the Law, the following information is prescribed in respect of the matters in paragraphs (a) to (e) of that section—

- (c) the name of each nominated supervisor;

(2) For the purposes of section 172(f) of the Law, the following matters and information are prescribed—

- (c) in the case of a centre-based service, the name and position of the responsible person in charge of the education and care service at any given time.

**National Quality Standard**

**Quality Area 4: Staffing Arrangements**

Standard 4.1: Staffing arrangements: Staffing arrangements enhance children's learning and development.

**Quality Area 7: Governance and Leadership**

Standard 7.1: Governance: Governance supports the operation of a quality service.