

YOUR RESPONSIBILITIES AS A PERSON WITH MANAGEMENT OR CONTROL





This resource introduces the legal responsibilities of the persons with management or control for an approved provider of an education and care service. Included in this resource is:

- An overview of your role as a person with management or control;
- An overview of the governance framework for education and care services;
- Ideas about how to ensure that you are meeting your obligations; and
- Frequently asked questions.

This resource is part of a governance induction kit for committee members of NSW education and care services. Other resources in the kit that may be useful are:

- Getting to Know the National Quality Framework: Tool for Committee Members;
- Who's Who at our Service;
- Checklist of Obligations under the National Quality Framework; and
- Introduction to Committee Roles and Responsibilities in an Education and Care Service, video clip.

If you have further questions about your role, speak to your nominated supervisor or get in touch with one of the organisations outlined in the Who's Who at our Service resource.

This is an introduction to your responsibilities under the Education and Care Services National Law and Regulations (National Law and Regulations). It is not legal advice. It aims to familiarise you with your obligations. Once you are comfortable with these, it is important that you review the Guide to the National Quality Framework developed by the [Australian Children's Education and Care Quality Authority \(ACECQA\)](#) and the [National Law and Regulations](#).

WHAT IS YOUR ROLE AS A PERSON WITH MANAGEMENT OR CONTROL?

Your role will depend on the legal setup and governance structure of the service you support.

The most important roles for an education and care service are the approved provider and the people implementing the responsibilities of the approved provider, which are the persons with management or control of the service.

The approved provider is the legal entity that gets the approval for running a service and is legally responsible for managing the service. The persons with management or control of a service are those persons within the approved provider who are responsible for managing the delivery of the education and care service, these may be the same people. The nominated supervisor(s) is/are responsible for the day-to-day management of a service.

For a company, the approved provider is the company. Persons with management or control are the director and secretary, as well as others participating in decision-making that affects at least a substantial part of the company's business or who have the capacity to significantly impact its financial position.

In an incorporated association, the approved provider is the incorporated association and the persons with management or control are the executive members of the management committee. Persons with management or control may also be any other person who participates in decision-making that affects a substantial part of the association's business or has the capacity to significantly impact its financial position.

In all cases, the nominated supervisor/s is generally an employee, employed by the approved provider.

Your role as a committee member

- If your approved provider is an incorporated association, you are generally a person with management or control if you hold an executive position, like Chairperson, Secretary or Treasurer.
- If your approved provider is a company, you may be a person with management or control if you participate in decision-making that affects at least a substantial part of the company's business or if you have capacity to significantly impact its financial position. This may include company directors or secretaries, or someone like the chief financial officer.

See the Who's Who at our Service resource for more information on these roles and responsibilities.

Approved providers and persons with management or control must be satisfied at all times that the service is properly following the National Law and Regulations. To do this, they need to understand the National Law and Regulations, and their legal responsibilities. They must also put policies and procedures in place to ensure that the committee members, company officers, and all other staff members and educators, understand their responsibilities under the National Law and Regulations.

If the service breaches the National Law or Regulations, the approved provider, nominated supervisor and/or person with management or control may be held directly accountable and may face personal liability. Depending on how serious the offence is the consequences may include a fine, cancellation of the service approval or prosecution in court.

Responsibilities of approved providers and persons with management or control cover all areas of the National Quality Standard (NQS), including health and safety, staffing and documentation. These responsibilities are detailed in the Checklist of Obligations under the National Quality Framework resource. More information on the relevant frameworks governing education and care services can be found in the resource Getting to know the National Quality Framework.

How the persons with management or control fulfil their roles is largely through the effective governance and leadership of the service.

Key responsibilities of persons with management or control, such as executive committee members

- Ensure that the service is operating in accordance with the National Law and Regulations;
- Ensure that children are safe and their wellbeing is supported at all times at the service;
- Employ and support a nominated supervisor(s) that meets the minimum requirements set out in the National Law;
- Employ an educational leader;
- Ensure a 'responsible person' is always present; and
- Ensure a Quality Improvement Plan (QIP) is developed and implemented, reviewed and updated.



GOVERNANCE AND LEADERSHIP OF EDUCATION AND CARE SERVICES

Quality Area 7 of the NQS covers governance and leadership (see box below). This is a very important area for persons with management or control to understand. To achieve the best outcomes for children and families, a service needs:

- trained and deadly staff and educators;
- good systems to identify and manage risks, and comply with the law;
- clear policies and procedures; and
- a safe and healthy environment for children.

Making sure that the service checks in regularly on its performance – asking what are its strengths and what can be improved – also helps you to keep improving and makes sure that the service is on track and responding to the community’s needs.

National Quality Standard, Quality Area 7

7.1 **Governance** supports the operation of a quality service:

- **A statement of philosophy and purpose** guides all aspects of the service’s operations;
- **Management systems** are in place to manage risk and enable the effective management and operation of a quality service; and
- **Roles and responsibilities** are clearly defined, and understood, and support effective decision-making and operation of the service.

7.2 **Effective leadership** builds and promotes a positive organisational culture and professional learning community.

- **Continuous improvement** through an effective self-assessment and quality improvement process.
- **Educational leadership** – The educational leader is supported and leads the development and implementation of the educational program and assessment and planning cycle.
- **Development of professionals** – Educators, co-ordinators and staff members’ performance is regularly evaluated and individual plans are in place to support learning and development.

Ensuring measures are in place to meet these standards is the best thing you can do to support the service to meet all of the standards under the NQS and ultimately the National Quality Framework. Sound management of these quality areas builds a good foundation for the nominated supervisor/s, educational leader, responsible person and others to deliver a high quality service.

The elements of the standard in the box above are quite clear.. The main measures to put in place and monitor for good management systems are:

- (a) Policies and procedures are developed, followed, accessible and reviewed as appropriate (regulations 168,170 and 171). There are many policies and procedures required (see box below).
- (b) Key information is displayed about the service (regulation 173 and section 172).
- (c) Information is reported to the Regulatory Authority about key operational matters, serious incidents, change in circumstances and complaints (regulations 174, 175, 176 and sections 173 and 174).
- (d) The required records are maintained and held confidentially (regulations 181, 183 and 184).
- (e) Staff/educators have the required knowledge and delegations of authority, and checks are in place to ensure that the service properly follows the National Law, the National Regulations and the NQS. This can be achieved with solid induction programs, clearly defined roles, and with ongoing education and professional development.
- (f) There is an effective complaints management system (regulation 168(2)(o)).

Required Policies and Procedures (regulation 168(2))

Health and safety	Staffing
Incident, injury, trauma and illness	Interactions with children
Dealing with infectious diseases	Enrolment and orientation
Dealing with medical conditions	Governance and service management, including confidentiality of records
Emergency and evacuation	Acceptance and refusal of authorisations
Delivery to and collection of children from the education and care service	Payment of fees and provision of a statement of fees
Excursions	Complaints
Providing a child safe environment	

TIPS FOR DEADLY LEADERS

- Include the major elements of NQS Standard 7.1 as standing agenda items for your meetings.
- Ask the nominated supervisor/s for a report on this element and progress under the QIP for each meeting.
- Ensure the service has checklists or systems for all requirements under the National Law and Regulations and a process for ensuring that they are all met and responsibilities are clear.
- A service induction kit and handbook can be a good tool to ensure that all staff, educators and committee members understand their responsibilities and can apply service policies, procedures and practices.
- An organisational chart which sets out staff and educator roles and their relationships to each other, as well as comprehensive position descriptions and annual performance reviews, can help ensure that all staff and educators are clear on their roles and responsibilities.
- Have a clear delegation of responsibilities so that all staff and educators are clear on who has what obligation and how it is met to ensure the service is properly following the National Law and Regulations.
- Familiarise yourself with the QIP while you are at each board meeting.
- Regularly schedule the service's review of all of its policies to make sure they are up to date and all staff and educators know and apply them.
- Conduct workshops with staff, educators and the committee about different areas of the NQS to build a shared understanding.
- Ensure staff and educators undergo regular performance reviews and that their strengths and weaknesses are discussed and developed.
- Visit the service on occasion and observe what is happening. Think about whether the service layout, the staff and educator activities and interactions are consistent with your statement of philosophy and legal requirements. Have the checklist with you as a reminder.
- Have clear tools for communication between the committee, the nominated supervisor/s, educational leader and all other staff and educators, and the ability to redress issues that arise.



FREQUENTLY ASKED QUESTIONS

What happens if a service is not complying with the National Law and Regulations?

If this is identified through an assessment and rating process, the problems will be addressed in the assessment and rating report. Depending on how serious the issue is, the Regulatory Authority will also consider which action is most appropriate. The box below sets out the different actions that the Regulatory Authority can take.

What may be the consequences for persons with management or control if any legal requirements of a service have not been met?

Persons with management or control may have the responsibilities of the approved provider under the National Law and Regulations. A list of the obligations of these roles is included in the accompanying resource in this induction kit. There are a number of actions that can be taken when the service has not met its legal requirements and persons with management or control can be held individually liable. The action taken will depend on things like the nature and seriousness of the non-compliance, its impact on changing provider behaviour and reducing risk to children. For more details please refer to the table on p7.

When may a service be given an Excellent rating?

Services must apply to the ACECQA for an excellence rating. They may apply for this rating when they are awarded an Exceeding National Quality Standard rating in all seven quality areas. An Excellent rating is awarded to service who promote exceptional education and care, demonstrate sector leadership and are committed to continually improving.

When may a service be given a Significant Improvement Required rating?

This may be given where a service does not meet a standard, quality area, or regulation for one of the quality areas in a way that poses "A significant risk to the safety, health or wellbeing of any child or children being educated and cared for by the service" (regulation 59).

This is more likely to be given where there are problems with the physical environment, children's health and safety, or staffing requirements.

What happens if a service is given a rating of Significant Improvement Required?

You will need to work together with the service staff and educators to put in place a plan to assess and quickly redress the areas of concern. This plan will be set out in the service's QIP.

The Regulatory Authority will come and assess services again soon afterwards to check that the service is meeting minimum requirements to ensure the health, safety and wellbeing of children at the service.

The Regulatory Authority may also take specific actions where legal requirements have not been met.

Are approved providers covered by insurance if they are fined for an offence by the Regulatory Authority?

Sometimes this is included in the service's insurance policy. This is something that you will need to check. There is also specific Director's Insurance that you can purchase to cover decisions made by company directors.

What happens when members of the approved provider change at an annual general meeting or otherwise?

You must notify the Regulatory Authority within 14 days of the appointment or removal of a committee member. The required forms can be completed using the online National Quality Agenda IT System on the [ACECQA](#) website. The Regulatory Authority may assess all persons with management and control as 'fit and proper' persons to manage a service and can request additional information to make that determination.

KEY REFERENCES

These are the key references used in the development of this resource.

ACECQA (2018) [Guide to the National Quality Framework](#). October 2018. ACECQA: Sydney.

ACECQA (2017) [Leadership and Management in Education and Care Services, An Analysis of Quality Area 7 of the National Quality Standard](#). Occasional Paper 5. August 2017. ACECQA: Sydney.



Action	What this means	Who is responsible?
Infringement notice	A fine when the service does not follow minor sections of the National Law or Regulations	Nominated supervisor
Caution letter	A warning letter regarding an incident of non-compliance	Approved provider, PMC
Administrative letters	A letter to the service identifying a breach to which the approved provider is asked to respond	Approved provider, PMC
Minor adjustment	A requirement to resolve a minor matter that has not seriously impacted the services quality	Approved provider, PMC
Emergency action notice	A requirement to remove an immediate risk to children	Approved provider, PMC
Compliance direction or notice	A requirement to do something to make sure the approved provider or the service is following the National Law	Approved provider, PMC
Enforceable undertaking	A person may agree to take certain actions or to not do certain things	Approved provider, PMC
Direction to exclude inappropriate persons from service premises	An instruction to stop a person from coming into the service	Approved provider, PMC Nominated supervisor
Amendment of a service or provider approval	A requirement on the approval, such as a condition, that the approved provider must follow	Approved provider, PMC
Prosecution	Bringing any offence to court or tribunal	Approved provider, PMC Nominated supervisor Educator, staff member for inappropriate discipline
Suspension of service or provider approval	Temporarily stopping a provider from operating a specific service or any service	Approved provider, PMC
Cancellation of service approval or provider approval	Permanently stopping a provider from operating a specific service or any service	Approved provider, PMC



