

Duty of Care (includes professional boundaries)

Purpose

ECMS has a duty of care to anyone who is reasonably likely to be affected by ECMS activities, including:

- children
- Their families and carers/guardians
- Staff and volunteers
- Other persons likely to be affected by the organisation's actions

ECMS endeavours to take all reasonable precautions to provide a safe environment and avoid or reduce the risk of injury to children and other members of the community.

ECMS Educators recognise and respect their commitment and responsibility to the safety and care of children in the service. Each educator will commit to providing quality services for children, being mindful of their duty of care.

The UN Convention on the Rights of the Child cites the following:

- Children are dependent and therefore more vulnerable
- They have low visibility
- They have multiple needs that they cannot meet themselves
- They are more affected by others inactivity
- They have no direct social or political power

This places early childhood educators in a unique relationship with children and their families which requires distinct responsibility and trust.

Educators recognise this is a powerful and important aspect of their work and are guided by the principle of duty of care. That is "you have an obligation to avoid acts or omissions, which could be reasonably foreseen to injure or harm other people"¹.

Roles and responsibilities

All ECMS employees, volunteers and students are required to take all reasonable practical actions and steps to avoid causing injury to persons to meet duty of care responsibilities.

¹ Department of Health, Australia

Definition

Duty of Care is a general legal duty on all individuals and organisations to avoid causing injury to persons. It requires everything 'reasonably practicable' to be done to protect the health and safety of others at the workplace. This duty is placed on:

- All employers/organisations
- Their employees/volunteers;
- Any others who have an influence on the hazards in a workplace

The latter includes contractors and those who design, manufacture, import, supply or install plant, equipment or materials used in the workplace. The duty is regardless of the size of the organisation, its income or whether the organisation has paid staff.

'Reasonably practicable' means that the requirements of the law vary with the degree of risk in a particular activity or environment which must be balanced against the time, trouble and cost of taking measures to control the risk. It allows the duty holder to choose the most efficient means for controlling a particular risk from the range of feasible possibilities.

The duty holder must show that it was not reasonably practicable to do more than what was done or that he/she has taken 'reasonable precautions and exercised due diligence.

Professional code of ethics

The principles of duty of care are supported by the [ECA Code of Ethics](#) as well as external service standards including the National Quality Framework.

Internal policy, procedure, systems and processes

Legislation, Regulations and the National Quality Framework require ECMS to have systems in place to manage legal obligations and duty of care. ECMS will endeavour to support implementation of legislative requirement through systems and processes that include appropriate policy and procedure. As employees, we all have a legal obligation to understand and implement these policies, procedures, systems and processes.

Organisational Risk Profile

ECMS has a comprehensive Risk Profile that supports the organisation identifying, assessing, mitigating and evaluating the risks associated with conducting business within the early childhood sphere. To develop and manage the implementation risks, a risk management framework is established, operational and comprises the following parts:

- Part 1: Risk scoring framework; and risk consequence and likelihood framework
- Part 2: ECMS Risk Categories
- Part 3: Board ECMS Risk Intolerance Statement
- Part 4: ECMS Risk Profile Summary, including
 - Risk Matrix and chart
- Part 5: ECMS Risk Profile including:
 - Risk;
 - Risk Rating
 - Mitigation actions
 - Risk Ownership

This profile is reviewed quarterly by the Executive Leadership team. The risk profile can be viewed [here](#).

Reasonable action

It is important that reasonable action taken is well documented and based on the assessment of all circumstances. Factors to consider include:

- The risk of harm and the likelihood of hazards occurring
- The type of injury which may occur, and the potential degree of seriousness
- Precautions which could be taken that may avoid harm
- The usefulness of the particular activity to take place which may involve risk
- Any statutory requirements or specific directions from DET
- Relevant professional standards
- Interface with other professionals

Breach of duty of care

Examples of duty of care implications to organisational operations include:

- Incident reporting which aims to ensure that due diligence and duty of care requirements are met and any identified deficiencies addressed.
- Responding to allegations of physical or sexual assault to ensure duty of care requirements are met.
- Investigating serious incidents that relate to possible breaches of Privacy from the perspective of assessing whether duty of care responsibilities have been met and assessing service provision standards.
- Management of obligations and duty of care relating to occupational health and safety.

Any staff member who breaches this policy may be subject to disciplinary action.

What it means to have a duty of care in your work role

Every child is supported and enabled to participate in early education and care that is free from prejudice and safe from abuse. Your responsibilities under duty of care are to do everything reasonable within the definition of your job role to make this happen. "Duty of Care" means providing care and support for individuals within the law and also within the policies, procedures and agreed ways of working of your employer. It is about avoiding abuse and injury to individuals, their friends and family and their property.

How your duty of care contributes to the safeguarding or protection of children

In your role you have a duty of care to raise any concerns you may have about any aspect of your work. These can range from inadequate working conditions, poor equipment, poor practice by other staff; to raising concerns about potential abuse cases and situations of neglect. It is your duty of care to safeguard children from harm through high quality curriculum development and robust supervision. All employees will immediately report any concerns of abuse they have to their line manager. These might include evidence or suspicions of bad practice by colleagues and managers, or abuse by another individual, another worker or an individual's family or friends. If you do not work in this way, you could be considered negligent or incompetent. If you are in any doubt at any time, you must discuss any issues you have with your line manager. **See 3.0 Child Safe Policy**

Who to ask for advice about anything you feel uncomfortable about in relation to dilemmas in your work

At ECMS, we will always deal with challenging situations together. You must know the limits of your role and not do or say anything outside of this. Always refer to your position description and the policies procedures of the organisation. It is important that you know

who to go for if you need advice because you are in a situation that you are not comfortable with. Your first point of call is your Area Manager. In the event they are not available, contact a General Manager or a Child Safety Advisor.

Professional boundaries²

A **professional boundary** is the distinction between the acceptable and unacceptable behaviour or emotional attachment in relation to a child (or child's family) during or outside your work.

Professional boundary crossing is when you allow or initiate a behaviour to persist that compromises the relationship with the child and/or family.

A **professional boundary violation** occurs when the nature of the relationship moves from a professional one to a personal one and is clearly harmful or exploitative of the child and/or family.

The ECMS **PC 1.1 Code of Conduct** policy makes clear the standards of professional behaviour expected for all staff members, contractors, volunteers and student placement workers at ECMS.

Examples of boundary crossing behaviour (that may lead to boundary violations)

The following behaviours are unacceptable in professional practice and are in clear breach of the ECMS Code of Conduct and the ECA Code of Ethics . Educators/staff will not engage in the following:

- Accepting gifts and or money (over \$15)
- Providing families/children with your personal contact details
- After hours contact
- Babysitting
- Social networking (eg: Facebook)
- Asking families for presents (eg: Birthday/Christmas)

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| Policy Created Date | July 2014, Reviewed September 2016 |
| Policy Review Date | September 2018 |
| Sources and Further Reading | UN Convention on the rights of the child UN Convention on the rights of the child - child friendly version poster The National Early Years Learning Framework for Australia, Victorian Early Years Learning and Development Framework Education and Care Services National Regulations 2011 Reg 73-76, |

² Taken from Child Wise train the trainer, July 2016

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| | <p>Education and Care Services National Law 2010 Section 168 & 323</p> <p>Related policies</p> <ul style="list-style-type: none"> OCEO 3.0 Child Safe OCEO 5.0 Complaints and feedback OCEO 2.0 Protected disclosure PC 1.1 Code of conduct Operations 1.3 Working with vulnerable children Operations 2.8 Incident, injury, trauma illness - Incident reporting Operations 2.20 Child safe environment |
| Related to NQS Q.A | 2, 3, 4, 5, 7 |