



Child Duty of Care Policy

Policy Statement:

As a child safe organisation, Northern Rivers Community Gateway (Community Gateway), supports all children, with a strong commitment to ensuring their safety and creating a secure environment. The safety, rights and best interests of children is the paramount consideration underpinning every level of decision-making and actions relating to our child-related services and programs. Our organisation implements the Child Safe Standards and National Principles for Child Safe Organisations and fosters a culture of safety and wellbeing.

Related Legislation and Policies:

- Sections of all of the following Acts may relate to Duty of Care: Anti-Discrimination Act 1991, Civil Liability Act 2003, Criminal Code Act 1995, Crimes Act 1900, Community Services (Complaints, Review and Monitoring) Act 1993, Community Welfare Act 1987 (NSW), Disability Discrimination Act 1992, Sex Discrimination Act 1984, Racial Discrimination Act 1975, Education and Care Services National Laws and Regulations including Regulation 168 and 170, Child Protection Act 1999, Child Protection (Prohibited Employment) Act 1998, Children and Young Persons (Care and Protection) Act 1998 amended (2009), Child Protection (Working with Children) Act 2012 and Regulation 2013, Child Protection (International Measures) Act 2006, Commission for Children and Young People and Child Guardian Act 2004, Education (Work Experience) Act 1996, UN Convention on the Rights of the Child, Work Health and Safety Act 2011, National Quality Standards, National Principles for Child Safe Organisations
- Other - Code of Conduct Agreement, Criminal Record Checking Policy, Children's Service Staff Policy, Governance Children's Services Policy, Risk Management Policy, Child Safety Policy, Work Health and Safety Policy, Child and Young People Protection Policy, Reportable Conduct of a Staff Member Procedure, Client Records Policy, Interacting with Children Policy, Human Rights Policy, Client Rights and Responsibilities Policy, External Complaints Policy, Privacy and Confidentiality Policy, Safe



Transportation of Children Policy, Excursion Policy, Child Medical Condition Policy, Food and Nutrition Policy, Child Sleep Policy, Infectious Diseases Policy, Routine Cleaning Procedure, Child Toys Procedure, Arrival and Departure Policy, Authorisations Policy, Social Media Policy, Orientation Policy, mobile device policy, staff information technology use policy, record keeping archive and storage policy, software modification and installation policy, privacy and confidentiality policy.

Definitions:

‘Duty of care’ – a legal concept that defines the duty a person must use reasonable care towards others in order to protect them from a known or reasonably foreseeable risk of harm and/or injury. The notion of duty of care is one that is contained in most service policies and procedures.

‘Reasonably practicable’ – the requirements of the law vary with the degree of risk in a particular activity or environment, which must be balanced against the time, 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. It also requires changes in technology and knowledge to be incorporated, but only as and when it is efficient to do so.

The duty holder must show it was not reasonably practicable to do more than what was done, or they have taken ‘reasonable precautions and exercised due diligence.’ The factors that staff will consider when determining ‘reasonableness’ of care include:

- Child’s age, experience, and capabilities - level of care generally greater the younger the child
- Physical and intellectual impairment - a child with a disability is generally at greater risk of injury than a child without a disability. This could be due to a physical inability to complete the activity without difficulty or an intellectual inability to appreciate the risks involved
- Medical condition - particular medical conditions such as asthma, diabetes, peanut allergy and epilepsy require special attention to ensure the child is not exposed to a greater risk of injury
- Behavioural characteristics - if a child is known to behave inappropriately then the level of care increases
- Nature of the activity and the environment in which the activity is held - activities with a higher level of risk and held in hazardous environments require a higher level of care.

‘Negligent’ – if the actions of a person are not made with care, attention, caution, and prudence, their actions are considered negligent. An exceedingly high degree of care is owed to children



because they have a limited capacity to care for themselves.

Application:

Duty of care is placed on:

- All employers
- Their employees
- Any others who have an influence on the hazards in a workplace. This includes contractors and those who design, manufacture, import, supply or install plant, equipment or materials used in the workplace.

Staff may have a duty of care:

- Where specifically prescribed in legislation in an Act of Parliament; or
- In other circumstances recognised by the Common Law, developed in courts and capable of taking account of both foreseeable and novel circumstances.

Procedure:

Legislation and regulations require that the Community Gateway has policy, procedure, systems, and processes in place to manage legal obligations and duty of care. Employees have a legal obligation to understand and implement these.

Child safe environment

- Qualified and appropriate staff are appointed, references are meticulously checked, and screenings conducted as appropriate (refer Recruitment and Selection Policy and Criminal Record Checking Policy)
- Rigorous induction processes for staff, volunteers and students that embed Child Safe Standards and practices of a child safe culture
- Proper staff training and professional development is provided
- A suite of policies and procedures are developed and maintained, available on the staff intranet and these are enforced at all times
- Staff are made aware of changes to legislation, policies and procedure



- All children attending our service are provided with a safe environment, both physically and online, through the creation of a child safe culture

Safe use of digital technologies and online environments procedures when providing early childhood education and care.

Children's safety and wellbeing are paramount at our services, including the safe use of digital technologies and online environments, including for child protection and children's learning and development and maintaining records. In line with the National Model Code and Guidelines developed by ACECQA, the approved provider has procedures in place to implement child-safe practices and ensure the effective and safe use of digital and personal devices in daily practice.

Staff must also refer also to the Code of Conduct agreement, mobile device policy, staff information technology use policy, record keeping archive and storage policy, software modification and installation policy, social media policy and privacy and confidentiality policy. Breaches of this policy are deemed breaches of the Code of Conduct.

Service devices:

- Only service-issued electronic devices are to be used when taking images or videos of children while providing education and care. This includes the service mobile phone, service iPads and service laptop.
- Software and security measures implemented on all digital devices and regularly updated by IT Administrator to protect against viruses, malware, and other cybersecurity threats.
- Staff should log out of the service's devices including online platform and applications once their shift is complete.

Personal electronic devices:

- Personal electronic devices that can take images or videos or voice recordings (such as tablets, phones, digital cameras, smart watches) and personal storage and file transfer media (such as SD cards, USB drives, hard drives and cloud storage) should not be in the possession of any person while providing education and care and working directly with children.

- Staff are to turn off personal electronic devices and place in the locked staff locker at the service. During vacation care and only when on a break, a staff member may only use their personal device in the designated staff area away from the children and must turn off and place back in the locked storage cabinet before returning to their shift.
- Essential purposes for which use and / or possession of a personal electronic device may be authorised for purposes other than taking images or recording videos of children can include:
 - communication in an emergency situation involving a lost child, injury to child or staff member, or other serious incident, or in the case of a lockdown or evacuation of the service premises
 - personal health requirements, e.g. heart or blood sugar level monitoring
 - disability, e.g. where a personal electronic device is an essential means of communication for an educator or other staff member
 - family necessity, e.g. a worker with an ill or dying family member
 - technology failure, e.g. when a temporary outage of service-issued electronic devices has occurred
- Families are made aware of the no device service rule at time of enrolment and may also be reminded via OWNA posts.
- Children must adhere to the “no device rule” at the service and any electronic devices are to be turned off and not accessed by being put away in their school bag.

Appropriate taking, use, storage and retention of images and videos of children

- Images/videos will only be taken for approved educational purposes, documentation, or with explicit parental consent.
- Staff should always confirm consent has been provided by parents/guardians before capturing or sharing any digital media involving their children. This consent is obtained at time of enrolment on the enrolment form or can be provided/withdrawn at any stage in writing. If the OWNA app shows a red camera crossed out icon next to the child’s name, this alerts the educator that no taking use of photos is allowed on the app. A blue Facebook icon on the app next to the child’s name indicates that authorisation has been



obtained to use images/recordings in social media posts (refer also to the social media policy).

- If parental/guardian authorisation is confirmed, staff should also obtain consent from children, wherever possible, before capturing or sharing any digital media involving themselves.
- Staff should adhere to the privacy and confidentiality policy and client records policy when documenting the program, ensuring that images and videos are stored securely and shared only with authorised individuals.
- Inappropriate images or videos are any that are not directly relevant to the child's participation in the activities of the approved provider.
- It is inappropriate for an image or video of a child to be shared to platforms beyond the intended educational purpose of the image or video.
- All digital content, such as photos and videos, is stored securely on a service device and access is limited to authorised personnel only. Service devices are password protected.
- Data is also stored in our cloud-based child care management software. OWNA's security features aim to protect user data and ensure a safe online environment for children and families using their platform.
- Any digital safety incidents are to be reported through the appropriate incident reporting mechanisms. The organisation has a data breach incident response plan in place as does the OWNA software provider.
- Retention and destruction of images is governed by relevant legislation and record keeping requirements and adherence to the Australian Privacy Principles.
 - Under the Australian Privacy principles, the Community Gateway has obligations to protect personal information and take reasonable steps to destroy or de-identify personal information when no longer needed for the purpose it was collected.
 - Data should be kept for a certain time and then destroyed properly. Under regulation 183, the NQF requires all records relating to a child enrolled at the service to be kept for 3 years from the last day they were educated and cared for by the service, unless the record:
 - relates to an incident, illness, injury or trauma suffered by a child while being educated and cared for by the service or may have occurred



following an incident whilst being educated and cared for by the service, in which case the record must be kept until the child is age 25, or

- is in relation to the death of a child while being educated and cared for by the service, in which case the record must be kept until 7 years after the death.
 - The Royal Commission into Institutionalised Cases of Child Sexual Abuse recommended records relating to child sexual abuse should be kept for 45 years
- Images and videos will also be deleted if consent is withdrawn.
- Staff must also refer to the record keeping archive and storage policy, client record policy and privacy and confidentiality policy.
- The Community Gateway will include digital content and storage in scheduled audits to identify and address potential security vulnerabilities.

Optical surveillance devices

- The Community Gateway has not installed any optical surveillance devices at any of the Rainbow Region Kids services.
- At the time of this policy/procedure update, none of the currently operating Rainbow Region Kids service premises have optical surveillance devices installed by the schools or landlords. Should the Community Gateway become aware of any changes to this, this policy will be reviewed and updated as soon as practicable.

Safe online environment at the service

- Educators, students, and volunteers are provided with training and professional development on privacy and data protection and digital safety practices, including recognising and mitigating risks associated with digital technologies and proper use of service-issued devices.
- The use of online environments at the service is to always be intentional and specific to the daily program activities.
- Children will be supported to use digital technology by ensuring age-appropriate, active, and engaging use of technology under direct supervision by an educator.



- Staff will aim to include relevant discussions in the activities and programs to educate children on how to use digital platforms safely.
- The approved provider encourages responsible and respectful use of technology to promote a culture of digital responsibility among educators, students, and volunteers.

Staff duty of care:

Important aspects for staff to understand and fulfill in relation to their duty of care include, but are not limited to:

Professionalism, training, and continuous improvement

- Maintain professional boundaries and behaviour, follow the organisation's Code of Conduct and relevant professional Code of Ethics
- Be familiar with and adhere to current information and legislation relevant to children, young people, and families with whom they are working.
- Keep knowledge and skills up to date.
- Respect the knowledge and contribution of other colleagues and organisations and work collaboratively with them.
- Provide accurate information and advice within their area of expertise and seek expert advice when no expertise is available.
- Be aware of and consider standards and guidelines in relation to the care situation.
- Know that when they experience difficulties complying with policies, procedures or practice they are able and required to bring this to the attention of their supervisor or manager.
- Raise any concern regarding any aspect of their work, especially child safety and protection.

Risk assessment and minimisation.

- Take steps to identify risks of injury or harm, any reasonably likely harmful effects of actions and inactions, and take reasonable care in response - assess the situation and act accordingly.



- Be aware some situations have heightened risk and to particularly follow procedure and risk mitigation, for example medication administration, excursions, water-based activities, outdoor play, toileting, social media use, arrival and departures, authorisations and transportation.
- Try to foresee any possible danger in activities and take appropriate steps to minimise or eliminate.
- Regard guidelines as a minimum safety standard and insist on higher standards if the group or conditions warrant it.

Child protection, welfare, and well-being

- Be aware of legislative requirements in relation to children at risk of significant harm, mandatory reporting, reportable conduct, and information sharing.
- Take action to protect and support children who may be at risk of significant harm.
- Take seriously information about harm or self-harm that comes to their attention.

Supervision and safety

- Northern Rivers Community Gateway is committed to implementing the Child Safe Standards.
- Promoting our culture of child safety and wellbeing by staff maintaining a safe environment and paying particular attention when providing transport, conducting activities and whenever supervising children.
- Regular training and discussion with staff and educators on child safety standards and child safety and child protection training.
- Ensure children are always adequately supervised and never leave children unattended. Staff and educators will take into consideration that children of different ages and abilities will require different levels of supervision, privacy, and autonomy.
- Maintain children's services educator to child ratios (see Children's Services Staffing Ration and Responsible Person Policy).
- All staff to take all reasonable precautions to protect children from harm and any hazard likely to cause illness, injury or trauma.



- Ask 'Am I acting as the reasonable or careful carer would in these circumstances?'
- Discuss safety issues with colleagues and children.
- Know and follow procedures to deal with accident, illness, injury and behaviour incidents including mandatory reporting and timely and effective identification of, and response to, children who may be at risk of or who are experiencing abuse or neglect.
- Adhere to work health and safety and emergency and evacuation procedure and conduct regular rehearsals as required.
- Staff following the Code of Conduct including the “no personal device policy” at Rainbow Region Kids services to maintain the safe use of online environments at the service.
- Adhering to the “no device policy” for children attending Rainbow Region Kids services to maintain the safe use of online environments at the service.
- Rainbow Region Kids service devices, including service mobiles, iPads and laptops to have passcodes and be locked up to prevent access.
- The use of online environments at the service to always be intentional and specific to the daily program activities.

Interacting with children and families

- Ensure interventions and activities are developmentally appropriate.
- Never touch a child, apart from such inevitable circumstances as protecting a child from injury, or rendering first-aid
- Do not interact with children on-on-one in an area not visible to others, unless it is required in a role, and alert manager or supervisor if a situation of one-on-one care or service delivery arises.
- Protect and support the rights of all children to feel safe and be safe at all times.
- Follow all requirements for arrival, departures, visitor access, authorisations, and permissions.

Privacy and confidentiality



- Communicate with and encourage participation among children and their families but always maintain strict privacy and confidentiality.
- Ensure all exchanges of information are lawful.

Safe, clean, and hygienic physical environment

- Maintain premises and equipment, remove and report broken or dangerous equipment, clean up spills, clear slip hazards, and take action to immediately safeguard against risk or harm.
- Ensure the service environment is safe for the group of children in the conditions.
- Ensure equipment is safe, used correctly and safely stored after use and process followed for use and storage of all medications and hazardous substances.
- Diligently complete cleaning and checks, risk assessment and hazard reports as required.
- Report repairs, hazards or incidents to ensure due diligence and deficiencies are addressed.
- Follow all infection control, hygiene, toilet procedure, including regular hand washing, using gloves when preparing food, applying first aid, cleaning up bodily fluids.

Food and nutrition

- Ensure children always have access to fresh drinking water and infection control protocol is followed.
- Follow safety standards and practices when preparing, handling, serving and storing food.
- Adhere to procedures regarding dietary needs, food allergies and restrictions.

Negligence and breach of duty of care

If an individual breaches a duty of care they owe another, that breach may lead to the individual being sued for negligence. The duty of care owed to a child/ren by a carer is that of a



'reasonable' carer. This means the duty of care owed is the duty one would expect from a hypothetical carer with normal skills and attributes.

This requires the carer to take reasonable care, and to avoid injuries to child/ren, which could reasonably be foreseen as possibly occurring. What is 'reasonable' and reasonably foreseeable will depend on the particular circumstances.

In order to determine whether or not negligence has been established, it must be proved that:

- A duty of care was owed in the circumstances.
- The duty was breached because of an act or omission on the part of the person owing the duty as they did not act as a reasonable person would have acted in the circumstances.
- A loss or harm is suffered as a result of that breach.
- The type of loss or harm suffered was a reasonably foreseeable consequence of the act or omission.

For example, negligence may apply in circumstances where:

- A child is obviously upset because he/she is being verbally bullied and the carer does not or is unable to stop the bullying.
- A child is being physically harmed by other children and the carer does not or is unable to stop the harm.
- There is an obvious hazard in the service which is not brought to the attention of the manager.
- A child threatens or shows evidence of self-harm, and this is not brought to the attention of the manager.
- A child reports harm or sexual abuse by a member of staff or someone from outside the service and this is not reported as required by child protection legislation.

Monitoring, evaluation and review

This policy will be monitored to ensure compliance with legislative requirements and unless deemed necessary through the identification of practice gaps, the service will review this policy every 12 months or when legislative changes have been identified.



COMMUNITY
GATEWAY



Version 10/Policy: Board created May 2008, last approved 26.02.2026, next review 2030/
Procedure: CEO approved 03.09.25, next full review 2026, Lead Senior Manger Counselling and Case Management Programs
and Coordinator

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