

Wyndham Community and Education Centre Inc Policy and Procedure

Policy name	Decision Making Responsibilities for VCAL & Youth (under-18) Policy and Procedure
Responsible person	CEO and VCAL & Youth Manager,
Staff involved	VCAL & Youth Program staff
Review dates	2022
Related documents	<p>Legislation: Education and Training Reform Act 2006 (Vic) and 2007 Education & Training Regulations (Vic), Children, Youth and Families Act 2005 (Vic), Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015, Crimes Act 1958 (Vic), Worker Screening Act 2020 (Vic), Occupational Health and Safety Act 2004 (Vic), Charter of Human Rights and Responsibilities Act 2006 (Vic), Disability Act 2006 (Vic), Information Privacy Act 2000 (Vic), Health Records Act 2001 (Vic), Family Law Act 1975 (Cth), Family Violence Protection Act 2008 (Vic), Children, Youth & Families Act 2005 (Vic), Privacy & Data Protection Act 2014 (Vic)</p> <p>Policies: Child Safe Policy and Procedure, Access and Equity Policy & Procedure, Critical Incident and Emergency Management Policy & Procedure, Risk Management Policy & Procedure, Accident & First Aid Policy & Procedure, Health Policy & Procedure, Asthma Policy & Procedure, Anaphylaxis Policy & Procedure, Privacy Policy & Procedure, VCAL Discipline Policy & Procedure, VCAL Attendance Policy & Procedure, Excursions Policy and Procedure, Complaints and Appeals Policy & Procedure, VCAL Attendance Policy & Procedure, VCAL Student Selection, Enrolment, Induction & Delivery - Policy & Procedure, Requests for Information about Students Policy & Procedure, Privacy Policy & Procedure (Students & Clients), VCAL Suspension & Expulsion Policy & Procedure, Student Well Being and Duty of Care in VCAL & Youth Programs (includes procedures for under 18s) Policy & Procedure, VCAL Assessment Policy & Procedure, VCAL Pathways and Transitions Policy & Procedures.</p> <p>Other: VCAL Guidelines Managing Behaviour, Minimum Standards for Registration as a non-school senior secondary provider, VRQA VET Guidelines, VCAL Teacher Package, VCAL Student Package, VCAL Student Handbook, Student Code of Conduct, Medication Administration Log, Medication Authority Form, Statutory Declaration for Informal Relative Carers (CCYP), Permission to Leave the Premises Form, VCAL & Youth Contract for Participants, Enrolment Form, Excursion Forms (including Local Area Form), permission to Leave premises Early Form, Marketing Release Form, Medical Forms (as required), Computer, E-mail and Internet Usage Guidelines,</p>

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	Marketing/Promotion Release Form-Individual Person, Student Induction Checklist, Consent to share information form, Statement of Fees, Training Plan, DET Transition from School Form, VCAL & Youth Legal Register, PTA documents, Department of Families, Fairness and Housing (DFFH), DET Community VCAL (CVCAL) Contract, Australian Human Rights Commission, Legal Register, Parenting Order (also known as a Family Law Act order), Family Violence Intervention Order or Protection Order, Referral from Mainstream school/Youth Support Agency or Other form.
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Policy context and purpose

Wyndham Community and Education Centre Inc. (Wyndham CEC) is committed to providing a safe, caring and supportive learning environment for students in its VCAL and Youth Programs.

This policy and procedure provides a guide as to responsibilities for students and processes around common decisions that need to be made in relation to student education and well-being while attending Wyndham CEC.

This policy and procedure is for students under-18 only. Anyone who is 18 and are legally considered an adult and capable of making their own decisions.

Policy

Each parent of a child under 18 years of age has parental responsibility for the child, unless that parental responsibility is varied by a court order or parenting plan or otherwise as set out in this policy.

In determining who is responsible for making a decision in relation to a student the CEO or her nominee, the VCAL & Youth Manager will determine who is responsible for making specific decisions for young people under-18 enrolled in VCAL and/ or Youth programs.

The following will be considered:

- if the student is an adult or a mature minor for the purpose of a particular decision, the student can make their own decision. If a student is a mature minor, assume the student does not wish to be assessed as a mature minor for a particular decision, if the student has not made evident an intention to make the decision independently of their parent or carer. If a student under the age of 18 years old indicates that they want to make a decision for themselves, the CEO or her nominee, the VCAL & Youth Manager should decide whether the student is a mature minor for that decision.

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- if the student is not an adult or mature minor, consider who has parental responsibility for the child (for example who are the parents listed on the child's birth certificate).
- if the parents are separated, consider:
 - o are there any court orders in place that affect decision-making responsibility — for example, parenting order (also known as a Family Law Act order), family violence intervention order or protection order
 - o are there any informal arrangements in place that affect decision-making responsibility — for example, parenting plan or informal care arrangements (such as the student living with their grandparent or other non-parent carer, where no court orders are in place for such an arrangement)
 - o if the decision is about day-to-day issues affecting the child, in which case a parent or carer who is spending time with the child on a particular day is able to make the decision
 - o if the decision is about a major long term issue affecting the child, in which case Wyndham CEC is encouraged to seek the views of each parent or carer with decision making responsibility for the child. A decision made by only one parent or carer in the absence of a contrary view or communication from the other parent or carer is sufficient.

Each parent of a student under 18 years of age has parental responsibility for the child unless that responsibility has been varied by a court order or a Parenting Plan.

Parental responsibility includes all powers, responsibility and authority which by law parents have in relation to their children.

Parents and carers are expected to provide Wyndham CEC with up-to-date information and documentation relating to relevant court orders or informal care arrangements. However, Wyndham CEC will request copies from parents or carers of relevant court orders or evidence of informal care arrangements that are in place, if they are aware of them, and make reasonable enquiries with parents and carers about those orders and arrangements from time to time.

In determining who is responsible for making a decision in relation to a student and the information to be provided to the person responsible for making the decision, Wyndham CEC staff must also consider the human rights of any relevant parties (for example the student's rights and their parents' or carers' rights) as set out in the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) and must act compatibly with the Charter.

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Decisions about major long term issues

Separated parents with decision-making responsibility are expected to consult with one another and make a genuine effort to come to a joint decision about an issue. The law does not require others, such as Wyndham CEC, to ensure that both parents have consulted with each other and come to a joint decision. However, Wyndham CEC is encouraged to have processes in place to seek the views of both separated parents about a major long term issue.

The following provides some guidance about the usual classification of common decisions.

Major long term issues include:

- enrolment or transfer and choice of school
- year level movement (that is, repeating or skipping a year)
- consents for overseas excursions
- major medical and health decisions
- decision for child to participate in special religious instruction
- chronic non-attendance at school
- the child's name
- a decision about a day-to-day issue that may have a major long term impact for a particular child.

Day-to-day issues include:

- non-attendance at Wyndham CEC when it is open for instruction on a particular day
- consent to participate in day excursions
- medical and health decisions that are not major.

Disputes between separated parents or carers

Whenever faced with a dispute between persons who are responsible for making decisions for a child, The CEO or her nominee the VCAL & Youth Manager must try to:

- avoid becoming involved
- avoid attempting to determine the dispute
- act neutrally and not adopt sides
- act in the best interests of the child or young person involved
- act in the best interests of the Wyndham CEC community.

Wyndham CEC staff should inform parents that Wyndham CEC is not the place to resolve disputes. These disputes should be resolved between the parents and carers through discussion, attendance at the Family Relationship Centre or at court.

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Other decision making arrangements

There are a range of other circumstances in which persons other than a child's parents may make decisions about a student.

Procedures

Definitions

Parent

A person that has parental responsibility for a child. This may include a biological parent or another person who has been granted parental responsibility by a court order.

Parental responsibility

All of the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

Parenting Orders (also known as Family Law Act orders)

Parenting Orders are Court orders made pursuant to the *Family Law Act 1975* (Cth) and may deal with any of the following:

- who the student is to live with
- the time a student is to spend with another person
- communication a student is to have with another person
- the allocation of parental responsibility
- other aspects of the care, welfare, or development of the student

In allocating parental responsibility, the Parenting Order may differentiate between major long term issues and other issues.

Major long term issues include issues about the care, welfare and development of the young person of a long term nature and include the following:

- The student's education (current and future)
- The student's religious and cultural upbringing
- The student's health
- The student's name
- Changes to the student's living arrangements

Where more than one person is responsible for making decisions about major long term issues, it is expected that they will consult with one another, and make a genuine effort to come to a joint decision.

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Where the decision to be made is not a major long term issue, the decision may be made by the person with whom the child or young person is spending most time with. This person can make the decision without consulting with any other person who may have parental responsibility for the child.

For decisions defined as major or long term issues regarding the young person's education or welfare, parental responsibility lies with the persons who have legal guardianship of the young person or the person who has been given responsibility through a Court Order or Parenting Plan.

Note: It is Wyndham CEC's responsibility to request copies of relevant court orders or informal arrangements that are in place.

- Parents, guardians and/or carers are responsible for providing Wyndham CEC's CEO or VCAL & Youth Manager with up-to-date documentation relating to relevant court orders or informal arrangements that are in place.

Family Violence Intervention Orders and Protection Orders

Family violence intervention orders are Court orders made pursuant to the *Family Violence Protection Act 2008 (Vic)*. They protect family members from behaviour committed by other family members.

Family violence intervention orders may provide for some or all of the following protections:

- Prohibit family violence
- Exclude a person from a particular residence
- Prohibit a person from approaching, telephoning or contacting another person
- Prohibit a person from being anywhere within a specified distance of where another person lives, works, attends an education program
- If a young person is to be protected by the Order and there is a parenting order in place, it may revive, vary, discharge or suspend the parenting order
- If a young person is to be protected by the Order and there is no parenting order in place, it may
 - Make arrangements for a child to live with, spend time with, or communicate with the person the subject of the order; or
 - Prohibit the person the subject of the order from living with, spending time with, or communicating with the child protected by the Order.

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Protection Orders are Court orders made pursuant to the *Children, Youth and Families Act 2005*(Vic) upon protective intervention by DFFH Child Protection. These orders may grant custody and/or guardianship of a young person to a person other than the parent of the young person. There are various types of protection orders including:

- family preservation orders
 - family reunification orders
 - care by Secretary orders
 - long term care orders
 - permanent care orders.
- When a protection order grants guardianship, it is allocating the right and responsibility for the long term welfare of a young person.
- When a protection order grants custody, it is allocating the right and responsibility to have the daily care and control of a young person; and the right to make decisions regarding the daily care and control of the young person.

Wyndham CEC maintains a Legal Register that reflects any current court orders to assist with the care of the safety and wellbeing of students in their care.

Parenting plans: Parenting Plan is a written agreement between parents that meets all of the following characteristics:

- It is made between the parents of the child
- It is signed by the parents of the child
- It is dated
- It deals with some or all of the following matters:
 - Person with whom the child is to live
 - The time the child is spend with a person
 - The allocation of parental responsibility
 - Any aspect of the care, welfare or development of the child.

A Parenting Plan is binding and can affect the allocation of parental responsibility even though it not an Order made by a Court. In addition, a Parenting Plan can be made after a Parenting Order. In such circumstances, the Parenting Plan can vary the Parenting Order made by a Court.

Parenting orders (also known as Family Law Act orders)

Court orders made pursuant to the Family Law Act 1975 (Cth) and may deal with any of the following issues:

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- person with whom the child is to live
- the time a child is to spend with another person
- communication a child is to have with another person
- the allocation of parental responsibility
- any aspect of the care, welfare or development of the child

Mature Minors

The law recognises that as children become older and more mature, they are more capable of making their own decisions about a wide range of issues including decisions about their education, healthcare and wellbeing. Young people may reach this stage before they are 18 years old. Young people in this category are referred to as mature minors.

The best interests of the student will always govern decisions about whether a student should be deemed a mature minor while enrolled in a program at Wyndham CEC.

The CEO and/ or her nominee, the VCAL & Youth Manager should consider whether a student fits the category of a mature minor based on the following:

- the law recognises that a young person with sufficient maturity and intelligence to understand the nature and effect of a decision has the capacity to make that decision on their own behalf
- there is no specific age when a young person may be deemed sufficiently mature and capable of making his or her own decision
- the CEO / VCAL & Youth Manager is responsible for determining whether a student is a mature minor for the purpose of making a particular decision about their education or welfare
- the young person must have sufficient maturity, understanding and intelligence to comprehend the nature and effect of the particular decision
- a mature minor student's consent must be informed, voluntary, specific and current.

Decisions will assess the student's:

- age
- level of maturity for their age
- understanding of the issues and consequences
- living arrangements (independence)
- educational progress/ results

Informal Carer Arrangements: When a child's parents are unable or unwilling to care for them, the responsibility often falls onto relatives or significant others to take on the care of the child. Sometimes this care is provided on an informal basis that does not give the carer any legal status over the child or formal recognition as a carer. In these

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circumstances, in order to allow these carers to work with Wyndham CEC an *Informal Carer Statutory Declaration*. This is a written declaration by the carer that sets out the care arrangements for the child can be completed.

Note: Generally, an informal carer who has provided Wyndham CEC with a completed *Informal Carer Statutory Declaration* may make school-based decisions for the child as set out in this policy and may access Wyndham CEC information ordinarily provided to a parent.

Subject to court orders, generally, a parent's decision overrides any decision made by an informal carer. Other factors that might be relevant to decision-making and information-sharing for the child include a consideration of whether the child is a mature minor or any safety and wellbeing concerns.

Informal Carer Statutory Declaration

When a child's parents are unable or unwilling to care for them, the responsibility often falls on relatives or significant others to take care of the child. Sometimes this care is provided on an informal basis and does not give the carer any legal status over the child or formal recognition as a carer.

In these circumstances, in order to allow these carers to work with Wyndham CEC that the child is attending or seeking to attend, carers will be asked to complete an informal carer statutory declaration. This is a written declaration by the carer that sets out the care arrangements for the child.

Formal carer arrangements

Where a child is in out-of-home care following an intervention by Department of Families, Fairness and Housing (DFFH) Child Protection resulting in a protection order, an 'authorisation' may be issued to the carer in order to enable them to make decisions about the child.

The types of decisions that a carer is authorised to make for the child are specified in the authorisation and will generally include day-to-day decisions about education and routine medical care.

Generally, carers are not authorised to make major long term decisions for a child, unless DFFH Child Protection have issued a specific authorisation allowing the carer to make decisions about issues of a long term nature.

Carers are responsible for providing the CEO or her nominee the VCAL & Youth Manager with a signed instrument of authorisation and for providing up-to-date information relating to any changes in care arrangements. However, the CEO or her nominee the VCAL & Youth Manager should ask for a copy of this authorisation

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whenever they are aware a change has been made. The copy of the authorisation will be reflected on Wyndham CEC's Legal Register.

In some circumstances, these orders may grant parental responsibility for major long term issues or day-to-day decisions for a child to someone other than the natural parent(s) of the child, including the child's day-to-day carer, the Secretary of DFFH a person authorised under an Instrument of Authorisation by the Secretary of DFFH or the child's permanent care parents.

Where there are protection orders in place, the CEO or her nominee the VCAL & Youth Manager must ensure the Wyndham CEC retains a copy of the orders and update the student's records to reflect any impact of these orders on care arrangements or decision making responsibility for students. This will be recorded on Wyndham CEC's Legal Register.

Independent Students

A student living independently means a student aged 15 - 17 years who is not living in the day to day care of a parent, legal guardian or carer pursuant to a court order.

Students sometimes choose to live separately from their parents. This can occur in situations where the student feels at risk of remaining in the family home due to issues of neglect, abuse, family violence, AoD use/ abuse.

Students living independently may request that the school:

- deems them a mature minor in relation to their education and welfare matters
- not involve the parents in decisions about their education or welfare
- not inform the parents about their schooling matters, including progress reports and excursions

In all circumstances when a student makes the request of "making school decisions on their own behalf" the CEO and/or VCAL & Youth Manager must first try to obtain confirmation from the parent or other responsible adults that the student is no longer living at home.

If Wyndham CEC confirms that the student lives independently, Wyndham CEC must ask the student to nominate a suitable adult to be a point of contact for the student, to sign consent form and for emergencies, etc.

If the student nominates a suitable adult, Wyndham CEC can then allow that suitable adult to make decisions for the student.

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If the student is living in the care of the nominated suitable adult, Wyndham CEC should ask the adult to provide an informal carer statutory declaration, confirming they have day to day care of the child, unless the adult can provide evidence of more formal status with a court order.

If the student is unable or unwilling to nominate a suitable adult to make decisions on their behalf, Wyndham CEC must record this and determine if the student is a mature minor following the guidelines above.

If Wyndham CEC then deems the student to be a mature minor for all their education decisions, Wyndham CEC can then deal directly with the student for all decisions about educational matters. This includes, for example, signing their own excursion forms.

If a parent objects to Wyndham CEC allowing the student to make their own decisions about schooling matters, the best interests of the student must come first.

Unless there is a risk of harm, Wyndham CEC will encourage the student and parents to resolve differences and will seek assistance from school partners or other support agencies linked to Wyndham CEC or the Department of Families, Fairness and Housing (DFFH).

Reporting educational progress

Students may ask Wyndham CEC to stop sharing their personal information with their parent(s)/ legal guardian. If Wyndham CEC ascertains that the student is a mature minor, or the student is living independently, Wyndham CEC can agree to this request with the exception of general information about the student's educational progress including semester reports unless the CEO and/or VCAL & Youth Manager deems it would adversely impact on the educational, social or emotional wellbeing of the student. Such circumstances might include:

- concerns for the student's safety, welfare or wellbeing due to allegations of family violence, emotional abuse or sexual abuse
- entrenched/protracted parental conflict having an adverse impact on the student and their education outcomes
- the student is estranged from the parent and the parent is not involved in supporting their child's education.

Disputes

Whenever faced with a dispute between persons who are responsible for decision making in relation to a young person, the CEO and/or VCAL & Youth Manager should:

- avoid becoming involved
- avoid attempting to determine the dispute

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- act neutrally and not take sides
- act in the best interests of the young person
- act in the best interests of the Wyndham CEC community

Disputes should be resolved between the parents/guardians through discussion, attendance at the Family Relationship Centre or at Court.

Decision Matrix

Decision	Responsibility
<ul style="list-style-type: none"> - Enrolment/transfer - Nomination of Emergency contacts - VCAL level movement - Development of Student Health Support Plan - Development of Individual Learning Plan/ Training Plan - Development of Behaviour Support Plan - Consent to referral to Student Support Services Officers/Workers 	<ul style="list-style-type: none"> - Persons with parental responsibility for “major long term issues” - Persons with guardianship - Persons allocated this responsibility pursuant to a Court Order or Parenting Plan - Persons who are carers under an Informal Carer Statutory Declaration
Non – attendance at Wyndham CEC	<p>If it relates to a specific day(s)</p> <ul style="list-style-type: none"> - Persons with parental responsibility - Persons with guardianship - Persons who are carers <p>If it relates to chronic non-attendance</p> <ul style="list-style-type: none"> - Persons with parental responsibility - Persons with for “major long term issues “guardianship - Persons allocated this responsibility pursuant to a Court Order or Parenting Plan - Persons who are carers under an Informal Carer Statutory Declaration
Consent to participate in day excursion	<ul style="list-style-type: none"> - Persons with parental responsibility and with whom the young person is spending time with

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	<ul style="list-style-type: none"> - Persons with guardianship - Persons allocated this responsibility pursuant to a Court Order or Parenting Plan - Persons who are carers
<p>Consent to participate in overnight excursion or camps</p>	<p>Persons with parental responsibility for “major long term issues”.</p> <ul style="list-style-type: none"> - Persons with guardianship - Persons allocated this responsibility pursuant to a Court Order or Parenting Plan - Persons who are carers under an Informal Carer Statutory Declaration.

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