

## Wyndham Community and Education Centre Inc Policy and Procedure

Policy name	<b>Decision Making Responsibilities for VCAL &amp; Youth (under-18) Policy and Procedure</b>
Responsible person	CEO and VCAL & Youth Manager,
Staff involved	VCAL & Youth Program staff
Review dates	2019
Related documents	<p><b>Legislation:</b> Education and Training Reform Act 2006 (Vic) and 2007 Education &amp; Training Regulations (Vic), Children, Youth and Families Act 2005 (Vic), Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015, Crimes Act 1958 (Vic), Working with Children Act 2005 (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)</p> <p><b>Policies:</b> Child Safe Policy and Procedure, Access and Equity Policy &amp; Procedure, Critical Incident and Emergency Management Policy &amp; Procedure, Risk Management Policy &amp; Procedure, Accident &amp; First Aid Policy &amp; Procedure, Health Policy &amp; Procedure, Asthma Policy &amp; Procedure, Anaphylaxis Policy &amp; Procedure, Privacy Policy &amp; Procedure, VCAL Discipline Policy &amp; Procedure, VCAL Attendance Policy &amp; Procedure, Excursions Policy and Procedure, Complaints and Appeals Policy &amp; Procedure, VCAL Attendance Policy &amp; Procedure, VCAL Student Selection, Enrolment, Induction &amp; Delivery - Policy &amp; Procedure</p> <p><b>Other:</b> 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 &amp; 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), PTA documents</p>

### **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.

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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 is considered an adult and capable of making their own decisions.

### **Policy**

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.

In making the determination, the following will be considered:

- Is the student a mature minor?
- Are court orders in place? (parenting/ custody orders; Intervention order; family violence orders; other protection orders)
- Does the student have a legal guardian/ informal carer in place?
- Is there a parenting plan in place?

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.

### **Parenting 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.

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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.

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.

### **Procedures**

#### **1. 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

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- 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.
- Protection Orders are Court orders made pursuant to the *Children, Youth and Families Act 2005*(Vic). These orders may grant custody and/or guardianship of a young person to a person other than the parent of the young person.
- 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.

### 2. Informal arrangements

**2.1 Parenting plans:** Parenting Plan is a written agreement 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.

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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.

**2.2 Informal Carers:** 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 circumstances, in order to allow these carers to work with Wyndham CEC an *Informal Carer Statutory Declaration* can be completed.

**Note:** 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.

### 3. 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:

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

### **4. 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

If a student makes this request, the CEO and/or VCAL & Youth Manager must obtain confirmation from the parents or other responsible adult that the student is no longer living at home.

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

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

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.

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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 Health and Human Services (DHHS).

### 5. 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.

### 6. 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
- 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"><li>- Enrolment/transfer</li><li>- Emergency contacts</li><li>- VCAL level movement</li><li>- Development of Student Health Support Plan</li><li>- Development of Individual Learning Plan/ Training Plan</li><li>- Development of Behaviour Support Plan</li><li>- Consent to referral to Student Support Services Officers</li></ul>	<ul style="list-style-type: none"><li>- Persons with parental responsibility for "major long term issues"</li><li>- Persons with guardianship</li><li>- Persons allocated this responsibility pursuant to a Court Order or Parenting Plan</li><li>- Persons who are carers under an Informal Carer Statutory Declaration</li></ul>

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<p>Non – attendance at Wyndham CEC</p>	<p>If it relates to a specific day(s)</p> <ul style="list-style-type: none"> <li>- Persons with parental responsibility</li> <li>- Persons with guardianship</li> <li>- Persons who are carers</li> </ul> <p>If it relates to chronic non-attendance</p> <ul style="list-style-type: none"> <li>- Persons with parental responsibility for major long term issues</li> <li>- Persons with guardianship</li> <li>- Persons allocated this responsibility pursuant to a Court Order or Parenting Plan</li> <li>- Persons who are carers under an Informal Carer Statutory Declaration</li> </ul>
<p>Consent to participate in day excursion</p>	<ul style="list-style-type: none"> <li>- Persons with parental responsibility and with whom the young person is spending time with</li> <li>- Persons with guardianship</li> <li>- Persons allocated this responsibility pursuant to a Court Order or Parenting Plan</li> <li>- Persons who are carers</li> </ul>
<p>Consent to participate in overnight excursion or camps</p>	<p>Persons with parental responsibility for major long term issues</p>