

**CHC08 Community Services
Training Package**

Version 4.1

CHCCS400C

Work within a relevant
legal and ethical framework

(Children's Services)

Learner guide

Edition 1

Training and Education Support

Industry Skills Unit

Meadowbank



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Section 1 - Understanding legislation relevant to children's services

Element and performance criteria

1 Demonstrate an understanding of legislation and common law relevant to work role.

- 1.1 Demonstrate in all work, an understanding of the legal responsibilities and obligations of the work role
- 1.2 Demonstrate key statutory and regulatory requirements relevant to the work role.
- 1.3 Fulfill duty of care responsibilities in the course of practice.
- 1.4 Accept responsibility for own actions.
- 1.5 Maintain confidentiality.
- 1.6 Where possible, seek the agreement of the client prior to providing services.

Getting started

Before you begin make sure you have the following resources:

- A copy of the *ECA Code of Ethics* – see Appendix 1.
- A copy of the *UN Convention on the Rights of the Child*
<http://www.unicef.org/crc/>
- A copy of the Guide to the National Quality Standard from:
<http://acecqa.gov.au/national-quality-framework/national-quality-standard/>
- A copy of the Education and Care Services National Regulations from:
<http://www.legislation.nsw.gov.au/sessionalview/sessional/subordleg/2011-653.pdf>
- A copy of *Belonging, Being and Becoming: The Early Years Learning Framework for Australia* or *My Time, Our Place: Framework for School Age Care in Australia* from:
<http://acecqa.gov.au/early-childhood-in-australia/learning-frameworks/>
- A copy of the **Australian Government's Early Childhood Policy Agenda** from:
www.deewr.gov.au/EarlyChildhood/Policy_Agenda/Pages/home.aspx
- Access to Internet.

People who are new to children's services are often overwhelmed by the number of rules and regulations that relate to child care and children's services. The legal and ethical framework that shapes how children's services operate, and the day-to-day decisions of educators and management, covers almost every aspect of service operation.

This learning section will give you an overview of some of the more important laws, regulations and guidelines that relate in particular to providing appropriate and safe care for children. Perhaps the most important of these, child protection laws and guidelines, will be looked at briefly in learning Section 4 – the unit examines Child Protection in more detail. Legal obligations and ethical considerations relating to staff employment, occupational, health and safety and management issues are also examined in greater detail in other units.

Legal requirements

Working out what is a legal obligation rather than an ethical consideration or simply a service specific policy or practice can be quite confusing. The following guidelines should help you begin to understand the differences (based on Stonehouse, 1998).

Legal obligations are:

- mandated by law
- punishable under the law if breached
- usually quite specific about what is required and allowed
- the minimum standards required
- related to particular services or work settings.

Ethical standards (or codes of practice) are:

- voluntary rather than mandated by law
- not formally enforced
- a set of broad principles or aims based on best practice
- focused on what is desirable and optimal
- developed and monitored from within the group they apply to
- targeted at individuals within a profession or work setting.

Policies and practices are:

- detailed statements and explanations of actions to be taken in particular situations
- usually specific to and developed by individual services
- informed by legal obligations and ethical considerations
- monitored and enforced through service management policies and procedures.

The following table gives you a sample of some of the more important legal and professional obligations and shows where they sit within the legal environment that surrounds children’s services. As you can see, legal and ethical considerations range from international (world-wide) conventions to Australian Government (national) and state laws and include regulations and codes, policies and procedures. It is important that you as an educator are familiar with the requirements of these and that you access a copy for easy referral.

Table 1.1 Legal and professional obligations of an educator

International obligations and codes	
The United Nations Convention on the Rights of the Child	<ul style="list-style-type: none"> • A set of 54 ‘Articles’ which establish universal basic standards for the care and protection of children. Proclaimed in 1957, adopted by the UN General Assembly in 1989 and incorporated indirectly into Australian Federal Law in 1990. Scheduled to the Human Rights and Equal Opportunity Commission Act 1986. http://www.unicef.org/crc/
National obligations and codes	
Education and Care Services National Regulations	<ul style="list-style-type: none"> • Mandatory operational standards for the operation of children’s services that apply nationally and are administered by state or territory regulatory authorities. http://www.legislation.nsw.gov.au/maintop/epub
National Quality Standards	<ul style="list-style-type: none"> • Mandatory quality standards for the operation of children’s services that apply nationally and are administered by state or territory regulatory authorities. http://acecqa.gov.au/national-quality-framework/national-quality-standard/

<p>National learning frameworks- Belonging, Being & Becoming: The Early Years Learning Framework and My Time, Our Place: Framework for School Age Care</p>	<ul style="list-style-type: none"> • Mandatory documents for early childhood services and school age care that provide broad direction for educators to facilitate children’s learning, play and leisure. They guide educators in curriculum decision-making and assist in planning, implementing and evaluating quality in services for children. They provide a set of principles, practices and outcomes. http://acecqa.gov.au/early-childhood-in-australia/learning-frameworks/
<p>National Quality Framework</p>	<ul style="list-style-type: none"> • Council of Australian Governments (COAG) endorsed national framework to raise quality and drive continuous improvement and consistency in education and care services through: <ul style="list-style-type: none"> • A national legislative framework • A National Quality Standard • A national quality rating and assessment process • A new national body to oversee the process called the Australian Children’s Education and Care Authority (ACECOA). http://www.deewr.gov.au/EarlyChildhood/Policy_Agenda/Quality/Pages/home.aspx
<p>Federal Privacy Act 1988</p>	<ul style="list-style-type: none"> • This law covers 11 information privacy principles (more detail will be discussed in this unit) Go to www.comlaw.gov.au and search for Privacy Act 1988 or alternatively visit www.privacy.gov.au
<p>Freedom of Information Act 1982</p>	<ul style="list-style-type: none"> • Provides Community members with an opportunity to access Governmental Documents, Policies and other important records
<p>Australian Early Childhood Association Code of Ethics</p>	<ul style="list-style-type: none"> • Voluntary professional code adopted in 1990 and initiated by Early Childhood Australia. It has since been updated and is made up of a set of statements about appropriate professional behaviour for all educators involved in early childhood services.
<p>Age discrimination, Equal Employment Opportunity, Human Rights, Racial and Sex Discrimination Laws</p>	<ul style="list-style-type: none"> • Australian Government and state laws overseeing anti-discrimination laws. Go to the resources section for a more complete list and access details.

Family Law Act 1975	<ul style="list-style-type: none"> Australian Government legislation administered by the Family Court of Australia covering regulations relating to the legal rights and responsibilities of parents and children. <p>http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/</p>
Work Health and Safety Act 2012	<ul style="list-style-type: none"> Australia has a national Work Health and Safety Act that governs the role of persons conducting a business or undertaking and employees in the areas of work, health and safety (WHS). Employees have specific responsibilities in the workplace. Safe Work Australia is the national organisation that oversees this Act and there are state regulatory authorities that support the Act. <p>http://www.safeworkaustralia.gov.au</p>

State (or territory) obligations and codes

State/Territory Regulatory Authorities	<ul style="list-style-type: none"> Although standards for children's services are national there are individual requirements that may vary between states/territories. A full list of these regulatory authorities are located in the resources section.
Police clearances and checks	<ul style="list-style-type: none"> The type of check varies between states and territories. Some of the checks are commonly known as Working in (with) Children Check and can be transferable between some states For more information about checks in each state/territory visit <p>http://www.careforkids.com.au/articlesv2/article.asp?lD=82</p>
A Code of Professional Practice for Staff in OOSH centres, 1997	<ul style="list-style-type: none"> Voluntary state professional code adopted in 1997 and initiated by Network of Community Activities in NSW. It is made up of a set of statements about appropriate professional behaviour for all educators involved in services for school aged children.

Food Safety	<ul style="list-style-type: none"> Each state/territory has adopted the Australian New Zealand Food Standards Code. Visit: http://www.foodstandards.gov.au/foodstandards/foodsafetystandardsaustraliaonly for specific information about the Food Safety Standards.
Contract Law	<ul style="list-style-type: none"> A body of law that relates to all forms of contracts and legally enforceable agreements between two or more 'parties'. Contract law is administered at various levels in the legal structure - international, federal and state - and relates to a variety of different legal 'Acts'.
Criminal law	<ul style="list-style-type: none"> Laws that involve rules of behavior that affect the whole of society and are enforced with specific punishments.
Civil law	<ul style="list-style-type: none"> Relates to disputes between people about personal, work or property matters that are resolved through a formal court system.
Common law	<ul style="list-style-type: none"> Law developed in court by judges when making decisions about the cases they hear. It is based on the principle of precedent, in which new decisions must be based on decisions made previously by other judges.

Duty of care

Duty of care is perhaps the most important legal obligation that you have as an educator.

The law says:

Everybody has a **duty of care** (or a responsibility) to **avoid acts and omissions** which can be **reasonably foreseen** to be likely to **injure other people**.

Duty of care is a requirement that a person act toward others and the public with the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would use. If a person's actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence.

Let's examine this principle more closely.

Activity 1.1 Duty of care



Write a response

First of all duty of care says we have to avoid **acts** that are likely to injure other people.

Think of an act (an action) of an educator that is likely to cause injury to the children in their care.

Duty of care also says that we have to avoid **omissions** (things that have **not** been done) that are likely to injure other people.

Think of an omission of an educator that is likely to cause injury to the children in their care.

Activity 1.1 continued



Write a response

Did you find it easier to think of omissions rather than actions that are likely to cause injury to children?

Now suggest some basic ways that you would exercise duty of care to ensure the wellbeing and safety of children whilst in your care.

Handwritten response area with horizontal lines and a large diagonal watermark reading 'SAMPLE'.

I am sure that maintaining supervision and ensuring a safe and healthy environment were on your list as these are some of the most basic ways that we practice our duty of care.

Now let us look at the words '**reasonably foreseen**'. This suggests that the law does not expect perfect care. The standard of care expected of you is the **standard that a reasonable person or a 'reasonable childcare educator' would provide.**

Reasonable care

A 'reasonable childcare educator' or service does things according to:

- relevant policies and regulations
- reasonable and lawful instructions
- their skills, training, duties and job description
- commonsense.

You should be beginning to see why a basic understanding of your legal and ethical obligations is so important.

Fulfilling your duty of care means thinking ahead

You need to consider what your legal obligations and professional or ethical responsibilities suggest you do in any particular situation.

So you need to:

- **Plan** what you want and hope will occur.
- **Prepare** according to this plan.
- **Predict** what may go wrong or differently to the plan.
- **Prepare** for these eventualities (within reason).
- In any situation ask yourself:
- What do I think are reasonable steps to take?
- What do my co-educators, management and the field feel is reasonable?
- What do relevant experts (if any) feel is reasonable?
- What does the law say I should do?

Laws are very firm indicators of the standard of care that a court would require.

Parental instructions and duty of care

One thing to be aware of is that parents may not call all the shots when it comes to how you fulfil your duty of care. Your duty is to the safety of others, balanced against other considerations. Your duty is not necessarily to look after a child exactly how their parents wish you to – although you must take into account any reasonable instruction or relevant information that parents give you, for example medical instructions. Ensure you keep appropriate documentation and records of any medical instructions, routine records in accordance with service policy.

Parents are generally (but not always) 'legal guardians' of the child. While this means they have a right to information and to defend their child's rights, family lifestyle and treatment within an organisation, they cannot over-ride that child's right to safety, shelter, adequate nutrition and a healthy environment.

The granting of parental permission no matter what the situation does not override or relieve you of your legal and ethical responsibilities.

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Activity 1.2 Parental instructions and duty of care



Write a response

Consider the following scenarios and write down how you think a reasonable educator might respond to these situations.

When you speak to Mr J about some difficulties you are having with Sarah's (aged four) behaviour towards other children he says, 'Just rouse on her then she'll stop being a bully.'

Cassie's mother asks you to give Cassie (aged two) a double dose of paracetamol with her lunch to ensure she sleeps because she was extremely restless and 'out of sorts' the night before.