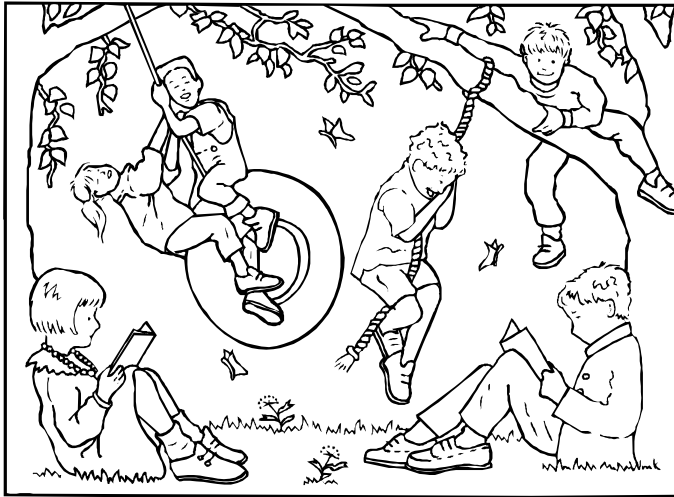


Duty of Care Risk Register



Written by Sandy Morton
June 2006

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Duty of Care Risk Register

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Please Note

Whilst every effort has been made to ensure the information contained within this resource is correct at the time of publication, future changes and specific occurrences at individual services may render the information incorrect.

This resource is to be used as a guide only and specific advice may have to be sought from relevant Government authorities, and Legal/Financial Advisers to suit each Centre's individual needs.

It should also be noted that the areas of risk are not limited to those addressed in this Risk Register. Individual services need to treat this guide as a living document that will need to be regularly reviewed and updated at an individual service level.

Duty of Care Risk Register
Duty of Care

What do we mean by duty of care?

In law you owe a duty of care to persons who are closely and directly affected by your actions and who you ought reasonably to have in mind when taking action.

You therefore need to ask yourself, who should you have in mind when you are operating your child care service?

- The children
- Their parents
- Your employees
- Visitors or volunteers
- Other people who may be at the centre

What are acceptable standards of care?

You have breached your duty of care if you have fallen below the acceptable standard of care.

This will be determined by:

- The risks inherent in the conduct ie. if there is a high probability of injury you must adopt a higher standard of care.
- The seriousness of the consequences should any risks eventuate ie. if the consequences are serious, more care and thus a higher standard may need to be observed.
- Whether the conduct conforms with existing standards ie. Regulations, Quality Assurance Standards and other legal requirements; the standard set by the majority of child care services; community expectations.
- Whether the service has kept up with changes in professional standards ie. ensure you follow latest literature and research.

Refer also to the attached article, written by Marilyn Hopkins, Hopkins and Associates Lawyers on *Duty of Care*.

Duty of Care Risk Register

What kinds of things have the potential to happen in your centre that you would need to be mindful of?

The following register of key risks has been developed to help you to assess the potential risks within your service.

Ask yourself the questions (Questions to ask column) and honestly answer YES or NO in the Centre Check column. The more times you can answer YES the more strategies you have in place to minimise your risks. If you answer NO to any of the questions, ask yourself what strategies you use to minimise the potential risk. If you have no strategies in place, you should discuss the potential risks with your staff team and establish some strategies for risk management.

Useful resources are listed in column 4, and Industry Benchmarks in column 5.

Key Risks:

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Administering medications to children</p> <p><u>Aim:</u> Reduce the risk of:</p> <ul style="list-style-type: none"> • allergic reactions to medications • wrong doses • over dosing • masking more serious illness • unauthorised access to medications • liabilities for staff 	<ul style="list-style-type: none"> • Are parents required to complete and sign an Authority to Administer Medication Form on the day medication is to be administered? • Do staff check to ensure medications are in their original packaging complete with instructions, name of child, current use by date and applicable to age of child? • Does the centre require that medications administered to children are prescribed by the child's medical practitioner? • Is medication administered in the presence of 2 adequately trained staff? • Do staff ALWAYS record name of medicine, expiry date, dose, date, time, who administered, who verified the correct child and dose, after EACH administration? • Is medication stored in a separate child proof container and refrigerated where necessary? • Are Special Health Needs Support Plans completed and signed by the child's parents and medical practitioner, for children with additional care/supervision needs in regard to their health and well being? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Model Administration of Medication Policy – Policies to Go By</i></p> <p><i>Staying Healthy in Child Care – Australian Government</i></p> <p><i>Management of the Child with Fever – Evidence Based Information Sheet for Consumers – Joanna Briggs Institute</i></p> <p><i>Health Support Planning in Schools, Pre-schools and Child Care services – South Australian Department of Education, Training and Employment</i></p> <p><i>Managing OHS in Children's Services – Lady Gowrie, Sydney</i></p> <p>KidSafe WA – www.kidsafewa.com.au</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulations: 63, 68, 97</p> <p>Children & Community Services (Outside School Hours Care) Regulations 2006 – Regulations: 48, 82</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 55; 81</p> <p>QIAS Principles: 5.5; 6.6 OSHCQA Principles: 6.4 FDCQA Principles: 4.1; 4.3</p>

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Are Emergency Action Plans completed for children with chronic illnesses e.g. diabetes, epilepsy, anaphylaxis etc. that may require emergency treatment or first aid? • Are Emergency Action Plans updated by the child's parents/medical practitioner at least once a year? • Are parents required to provide authority for the application of ointments or creams for first aid, sun screen, insect bites, nappy rash, sore gums during teething etc? • Do parents advise the centre when their child is taking medication at home? • Does the centre limit the administration of non-prescribed medications to children? • Does the centre check that children have not had previous allergic reaction to the medication prior to administering medications at the centre? • Are staff appropriately trained in the administering of medications? • Do staff feel confident in their ability to administer medications. 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>		

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Chemicals and dangerous products</p> <p><u>Aim:</u> Reduce risk of:</p> <ul style="list-style-type: none"> • injury • ill health • miss-use of products • unauthorised access to dangerous products 	<ul style="list-style-type: none"> • Are Material Safety Data Sheets (MSDS) kept for all hazardous chemicals? • Are hazardous chemicals stored appropriately? • Are all hazardous chemicals stored in their original labelled containers? • Are all hazardous products used in accordance with the manufacturers written instructions and agreed workplace procedures? • Are hazardous chemicals only used when children are not present at the centre? • Are less toxic substances used wherever possible? • Are children protected from contact with any hazardous chemicals on the premises? • Does the centre have a First Aid Action Plan for all dangerous products? • Does the centre maintain a register of all hazardous substances? • Are staff trained/instructed in the use of hazardous chemicals? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Risk Management for Child Care</i> – Guild Insurance</p> <p><i>Managing OHS in Children’s Services</i> – Lady Gowrie, Sydney</p> <p><i>Quality Practices Guides</i> – National Childcare Accreditation Council</p> <p>KidSafe WA – www.kidsafewa.com.au</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulation: 55</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 42</p> <p>Occupational Safety & Health Regulations 1996 – Clause 5.11; 5.12; 5.13; 5.20; 5.21</p> <p>QIAS Principles: 5.3 OSHCQA Principles: 7.2 FDCQA Principles: 4.1</p>

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Children with severe allergies</p> <p><u>Aims:</u></p> <ul style="list-style-type: none"> To protect children from their allergens Appropriate first aid actions taken when reactions occur 	<ul style="list-style-type: none"> Are staff trained in the prevention, recognition and management of anaphylaxis, including use of the EpiPen? Is the food co-ordinator trained and experienced in managing the provision of meals for children with allergies, including preventing cross contamination and identifying allergens on food labels? Does the centre conduct emergency anaphylaxis drills to ensure staff are confident and able to act in an emergency? Are Emergency Action Plans (EAPs) completed for children with anaphylaxis? Are EAPs regularly reviewed? Is the expiry date of the EpiPen included on the EAP? Do staff check EpiPens on a regular basis to ensure they are not cloudy? Are EAPs placed in a prominent position in the area where the child may be present? Has the parent signed a consent form allowing the EAP to be displayed in a prominent place? Are all staff, including relief staff, made aware of children with severe allergies and their EAPs? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Model Managing Anaphylaxis Policy – Policies to Go By</i></p> <p><i>Dealing with Food Allergy – video & booklet – Allergy Unit, RPA Hospital, NSW</i></p> <p><i>Guidelines for the prevention, recognition and management of anaphylaxis in childcare and school sites – ASCIA – www.allergy.org.au</i></p> <p><i>HELP I don't know what to do about allergies and anaphylaxis – a guide to enrolling a child with severe food allergies in a childcare service – Community Child Care Co-operative, NSW</i></p>	<p>Anaphylaxis Expert Working Committee – Department of Health</p> <p>Child Care Anaphylaxis Working Group – Department for Community Development</p> <p>QIAS Principles: 6.1 OSHCQA Principles: 6.1 FDCQA Principles: 4.2</p>

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • If an emergency occurs (ambulance required) is a photocopy of the child's enrolment form and EAP provided for ambulance and hospital staff? • Does the centre implement strategies to minimise children's allergens? • Are parents consulted and encouraged to share information about how they practice avoidance of allergens and recognise if a reaction is occurring? • Has the parent signed a consent form allowing staff to share information about their child's allergies with other families to create a safer environment for their child (i.e. newsletter, notices etc.)? • Are measures taken to educate everyone at the centre about the need to maintain a safe environment for children with severe allergies? 	<p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p>		
<p>Electrical hazards</p> <p><u>Aim:</u> Reduce the risk of:</p> <ul style="list-style-type: none"> • death • injury, or • ill health due to electric shock. 	<ul style="list-style-type: none"> • Are all electrical cords and power points free from damage and regularly checked? • Are power cords kept away from heat, water, oil, hot surfaces, walkways, children's reach? • Are power cords coiled tidily i.e. not in knots, when not in use? • Is electrical equipment tested, inspected and/or protectively earthed and tagged annually by a qualified electrician? 	<p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p>	<p><i>Managing OHS in Children's Services</i> – Lady Gowrie, Sydney</p> <p><i>Risk Management Guide for Child Care</i> – Guild Insurance</p> <p><i>Worksafe website</i> – www.safetyline.wa.gov.au</p> <p>KidSafe WA – www.kidsafewa.com.au</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulation: 46; 47; 49; 50</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 34; 35; 37; 38</p> <p>Occupational Safety & Health Regulations 1996 – Clause 3.59; 3.60</p>

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Are RCDs push button tested at least once a year and tested by a qualified electrician every 2 years? • Are all repairs undertaken by a qualified accredited expert only? • Are electrical appliances unplugged when not in use? • Are heating and air-conditioning units maintained regularly and cleaned on an annual basis? 	<p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p>		<p>QIAS Principles: 5.4 OSHCQA Principles: 7.2 FDCQA Principles: 4.1</p>
<p>Emergency situations due to – fire, natural disaster, hostile persons, gas leak, toxic release, snake on premises etc.</p> <p><u>Aim:</u> Protection from life threatening situations.</p>	<ul style="list-style-type: none"> • Is your centre's evacuation and emergency plan clearly displayed? • Are emergency drills conducted regularly, at differing times of the day, in response to differing disaster scenarios? • Are records of drills kept for 3 years? • Are these drills evaluated and improvements discussed? • Are fire extinguishers located at key areas, and are staff trained in their use? • Are smoke alarms in good working order? • Does your service's opening and closing procedure check power outlets and appliances to ensure equipment is turned off, and alarm systems to ensure alarms are properly set? • Do you have a Critical Incident Management Plan, for staff to follow during a critical incident at the service? 	<p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p>	<p><i>Risk Management Guide for Child Care – Guild Insurance</i></p> <p><i>Model Safety Policy; Model Occupational Safety & Health Policy and Handbook – Policies to Go By</i></p> <p>DCD Fact Sheets – <i>Fire Safety & Emergency Evacuation</i> www.community.wa.gov.au</p> <p>KidSafe WA – www.kidsafewa.com.au</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulation: 37; 63, 64</p> <p>Children & Community Services (OSHC) Regulations 2006 – Regulation 36; 42, 43</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 27; 50; 51; 59</p> <p>QIAS Principles: 5.5 OSHCQA Principles: 7.2 FDCQA Principles: 4.3</p> <p>Occupational Safety & Health Regulations 1996 – Clause 3.9; 3.10</p>

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Excursions</p> <p><u>Aim:</u> To ensure the safety of children and staff during excursions.</p>	<ul style="list-style-type: none"> • Is an excursion plan completed for each excursion? • Does a staff member conducting the excursion, visit the excursion venue if not used before? • Are all excursions publicised to all parents? • Is written permission obtained from parents whose children are participating in the excursion? • Does the person in charge of the excursion take a list of participating children and parent's emergency contact details with them on the excursion? • Does the person in charge of the excursion have a mobile phone on which he/she may be contacted at all times? • Is a First Aid Kit always taken on excursions? • Are contingencies planned for inclement weather? • Are emergency procedures planned for each excursion? • Do parents provide permission for their child to be taken on walking excursions within the community on the enrolment form? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p>DCD Fact Sheets – <i>Planning Safe Excursions; Planning Safe Water Activities – Assessing Risk; Safety and Public Toilets; Staffing Swimming Activities</i> www.community.wa.gov.au</p> <p><i>Model Excursion Policy – Policies to Go By</i></p> <p>Royal Life Saving WA website – www.lifesavingwa.com.au</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulations: 86, 87, 88, 89, 90, 94</p> <p>Children & Community Services (Outside School Hours Care) Regulations 2006 – Regulations: 51, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, Schedule 2</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 53; 58; 70; 71; 72; 73; 74; 78</p> <p>QIAS Principles: 5.2 OSHCQA Principles: 5.3; 5.4 FDCQA Principles: 4.1</p> <p>Royal Life Saving Qualifications</p>

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> If children are taken on swimming excursions, are regulatory standards for adult:child ratios and staff rescue and resuscitation qualifications stringently adhered to? 	<p>YES [] NO []</p>		
<p>Infection Control</p> <p><u>Aim:</u> Reduce the risk of:</p> <ul style="list-style-type: none"> illness epidemics <p>Ensure:</p> <ul style="list-style-type: none"> children's well-being well-being of unborn babies (staff) 	<ul style="list-style-type: none"> Are the centre's hygiene procedures carefully monitored and stringently followed by all staff? <ul style="list-style-type: none"> Hand washing procedures Cleaning and disinfecting procedures Waste management procedures Are children encouraged to wash their hands after visiting the toilet; after nappy changing; before eating; after playing outdoors; after wiping their nose? Are all staff provided with information on recommended immunisations? Are children and staff immunised? Does the centre have a current immunisation schedule on display for families to access? Is a register of immunisations maintained? Are all staff advised of the potential health risks to the unborn baby from infections that could be contracted through working with children? Are all blood spills and body secretions contained, cleaned up and disinfected? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Staying Health in Child Care</i> – Australian Government</p> <p><i>Communicable Disease Guidelines – for teachers, child care workers, local government authorities, and medical practitioners</i> – Department of Health</p> <p><i>Reducing the risk of infectious diseases in child care workplaces</i> – Worksafe WA Commission</p> <p>DCD Fact Sheets – <i>Clean & Healthy Premises; Healthy Pets Healthy Children; Managing & Preventing Illness</i> www.community.wa.gov.au</p> <p><i>Improving Infection Control in Child Care Services</i> – Centre for Community Child Health, Royal Children's Hospital, Melbourne.</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulation: 59; 97, 99</p> <p>Children & Community Services (OSHC) Regulations 2006 – Regulation 82, 83</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 44; 46; 81; 83</p> <p>QIAS Principles: 6.3; 6.4; 6.6</p> <p>OSHCQA Principles: 6.2; 6.3</p> <p>FDCQA Principles: 4.3; 4.4</p>

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Are toys cleaned regularly? • Is nappy changing always conducted in the designated area and following stringent infection control procedures? • Are children and staff with infectious diseases excluded from the centre in accordance with NHMRC recommendations? • Does the centre advise families that their child will be excluded from the centre if there are reasonable grounds for suspecting they have a communicable disease? • Are families required to provide a Doctor's Clearance before a child with a contagious disease can return to the centre? • Are staff, families and visitors to the centre advised in the event of an outbreak of a communicable disease at the centre? • Is information available to staff, families and visitors regarding the symptoms and exclusion periods for communicable diseases? 	<p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p>		

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Injuries due to poor maintenance of physical environment including equipment and toys</p> <p><u>Aim:</u> Reduce the risk of:</p> <ul style="list-style-type: none"> • injuries • ill health • liabilities as a result of claims of negligence 	<ul style="list-style-type: none"> • Are daily routine checks made of building, equipment and toys? • Do you have a Hazard Report Form? • Do you note recurring injuries and take action to reduce these injuries? • Are staff inducted into hazard control procedures? • Do you identify specific items of equipment that pose higher risks? • Do you take steps to minimise potential injuries due to use of this equipment? • Have all plants (indoor and outdoor) been accurately identified? • Is all poisonous vegetation inaccessible to children? • Is a safety audit conducted by a suitably qualified person at least annually? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Managing OHS in Children's Services</i> – Lady Gowrie</p> <p><i>Occupational Safety & Health Handbook</i> – www.cssu.org.au</p> <p><i>Occupational Safety & Health Model Policy</i> – Policies to Go By – CSSU</p> <p>Worksafe website – www.safetyline.wa.gov.au</p> <p><i>Risk Management Guide for Child Care</i> – Guild Insurance</p> <p>KidSafe WA – www.kidsafewa.com.au</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulation: 59; 84</p> <p>Children & Community Services (OSHC) Regulations 2006 – Regulation 33; 35</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 46; 43</p> <p>Occupational Safety & Health Act 1984 – Clause 19; 20</p> <p>Occupational Safety & Health Regulations 1996 – Clause 4.37</p> <p>QIAS Principles: 5.4 OSHCQA Principles: 7.2 FDCQA Principles: 4.1</p>
<p>Injuries due to poor supervision of children</p> <p><u>Aim:</u> Reduce the risk of:</p> <ul style="list-style-type: none"> • injuries • ill health • liabilities as a result of claims of negligence 	<ul style="list-style-type: none"> • Are appropriate staff:child ratios according to regulations maintained at all times? • Are children within sight and/or hearing of a staff member at all times? • Do staff position themselves to ensure effective supervision of all children under their care at all times? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Model Supervision Policy</i> – Policies to Go By</p> <p><i>Quality Practices Guides</i> – National Childcare Accreditation Council</p> <p>DCD Information Sheets – 'Minimum contact staff'; 'Supervising Officer' www.community.wa.gov.au</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulation: 23; 24; 25</p> <p>Children & Community Services (OSHC) Regulations 2006 – Regulation 24; 25</p>

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Do staff use their knowledge of each child to ensure children are adequately supervised at all times? • Are relief staff adequately informed about children's propensities? • Are play areas arranged to ensure children can be effectively supervised? • Do staff communicate with each other about the supervision of children? • Are levels of supervision adapted according to: <ul style="list-style-type: none"> - size of group - size of play area - number of staff supervising - experience of staff - staff knowledge of children - characteristics, developmental level & age group of children - types of activities - potential hazards - transitions 	<p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p>		<p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 21; 22; 77; 78</p> <p>QIAS Principles: 5.2 OSHCQA Principles: 7.1 FDCQA Principles: 2.1; 4.1; 4.5; 4.6</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Maintaining Confidentiality</p> <p><u>Aims:</u></p> <ul style="list-style-type: none"> • Ensure all centre representatives maintain high levels of confidentiality at all times. • Protect the privacy of children, families, staff and centre management. 	<ul style="list-style-type: none"> • Are all staff and management members required to sign a Confidentiality Statement on appointment? • Does the service adhere to the National Privacy Principles in regard to collection, use, disclosure, maintenance, storage, access to, and destruction of personal information? • Is a Privacy Statement which defines why personal information is required, how it is used, and who may have access to it, attached to all forms that require the provision of personal information? • Are privacy complaints dealt with promptly and consistently? • Is parent written authority sought before visual images of children are taken and used by the centre? • Are children's images never transmitted on the internet or by email? • Are confidential conversations conducted in a quiet area away from the other children, parents and staff? • Is confidential information relating to children, families and staff only accessed by or disclosed to authorised people who need the information to fulfil their responsibilities at the centre, or who have a legal right to know? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Model Confidentiality/Privacy Policy – Policies to Go By</i></p> <p><i>A Guide to Privacy for Small Business – Office of the Privacy Commissioner –</i> www.privacy.gov.au</p> <p>DCD Fact Sheets – <i>Confidentiality of Records –</i> www.community.wa.gov.au</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulations: 21; 39; 73; 74; 76</p> <p>Children & Community Services (Outside School Hours Care) Regulations 2006 – Regulations: 22; 53; 54; 55</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 20; 60; 61; 62</p> <p>QIAS Principles: 2.1; 3.2; 5.1</p> <p>OSHCQA Principles: 2.1; 6.4; 8.1; 8.3; 8.6</p> <p>FDCQA Principles: 1.3; 1.4; 2.1; 2.3; 4.1; 4.4; 4.5; 4.6; 6.3</p> <p>Privacy Act 1988 – National Privacy Principles</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Managing accidents and injuries</p> <p><u>Aims:</u></p> <ul style="list-style-type: none"> • Ensure appropriate response to protect children's well-being. • Ensure appropriate notifications given to parents, insurance company, DCD, WorkSafe; WorkCover. 	<ul style="list-style-type: none"> • Is a fully maintained First Aid Kit, that is checked and restocked on a regular basis, readily available at all times? • Are all staff aware of the location of the First Aid Kit? • Is an appropriately qualified First Aider on the premises at all times children are present? • Is a system in place to maintain currency of staff First Aid Certificates? • Is personal protective equipment available for First Aiders? • Are records kept of all accidents or injuries and first aid treatments given to children by centre staff? • Are parents always informed of accidents/injuries sustained by their child on the day of the incident? • Are parents required to sign the Accident Report Form to verify they have been fully informed? • Is your insurance company notified of all serious injuries to children including hospitalisation, calling an ambulance, injuries to head, face, teeth, broken limbs, amputation etc? • Is DCD notified of the death or hospitalisation of an enrolled child during a care session? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Model Safety Policy – Policies to Go By</i></p> <p><i>Risk Management for Child Care – Guild Insurance</i></p> <p><i>Managing OHS in Children's Services – Lady Gowrie, Sydney</i></p> <p><i>Quality Practices Guides – National Childcare Accreditation Council</i></p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulations: 63, 69, 97</p> <p>Children & Community Services (Outside School Hours Care) Regulations 2006 – Regulations: 49, 82</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 50; 56; 81</p> <p>QIAS Principles: 5.5; OSHCQA Principles: 7.2; 7.3 FDCQA Principles: 4.3</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Are clear written procedures for dealing with accidents readily available to staff? • Are emergency contact numbers displayed and readily available to staff? • Do you have strategies in place for maintaining appropriate staff:child ratios, whilst also caring for the injured child or accompanying the injured child to hospital? • Is there a process for recording injuries or illness of staff, contracted in the workplace? • Does management know which staff injuries/illnesses must be reported to WorkSafe and Work Cover? • Does the centre have an injury management plan that assists the rehabilitation of staff with injuries/illness back to work? • Does management maintain communication with Work Cover in regard to the return to work of injured employees? 	<p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p> <p style="text-align: center;"><i>YES [] NO []</i></p>		

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Managing violent, bullying or harassing behaviour</p> <p><u>Aim:</u> Protection of children and staff from injuries and stress caused by the violent, bullying or harassing behaviours of others.</p>	<ul style="list-style-type: none"> • Are clear guidelines about acceptable behaviours communicated to staff and parents? • Does the centre have a code of conduct for staff and families? • Do staff role model acceptable behaviours in their interactions with children, parents and work colleagues? • Are unacceptable behaviours dealt with promptly and in accordance with centre procedure? • Are staff given support and guidance in dealing with unacceptable behaviours when needed? • Are children with a propensity to act inappropriately carefully monitored and supervised by staff? • Does the service seek professional support in managing violent, bullying or harassing behaviour? • Does the service have a Critical Incident Management Plan to deal with violent or abusive visitors? • Does the service have a procedure for dealing with allegations of harassment within the workplace? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p>DCD Fact Sheets – <i>Bullying – What to do about it; Violent, bullying and harassing behaviour; Guiding children’s behaviour; Guiding children towards positive and responsible behaviour</i> www.community.wa.gov.au r</p> <p><i>Model policies on: Guiding Children’s Behaviour; Bullying, Violence and Harassment; Critical Incident Management Plan – Policies to Go By</i></p> <p><i>Information Sheet – Sexual Harassment – Commissioner for Equal Opportunity –</i> www.equalopportunity.wa.gov.au</p> <p><i>Fact Sheet – Harassment at Work – National Occupational Health & safety Commission –</i> www.nohsc.gov.au</p> <p><i>Managing OHS in Children’s Services – Lady Gowrie, Sydney</i></p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulations: 64, 76, 85</p> <p>Children & Community Services (Outside School Hours Care) Regulations 2006 – Regulations: 43, 66</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 51; 63; 69</p> <p>QIAS Principles: 1.1; 1.2; 1.3; 1.4; 1.5; 2.3; 4.2</p> <p>OSHCQA Principles: 2.3; 5.3</p> <p>FDCQA Principles: 3.3; 3.4; 4.2</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Manual handling</p> <p><u>Aim:</u> Reduce the risk of:</p> <ul style="list-style-type: none"> • back injuries • staff time off work due to injury 	<ul style="list-style-type: none"> • Are staff trained in safe manual handling techniques? • Are posters illustrating correct lifting techniques prominently displayed? • Do staff carry children only when necessary? • Do staff use safe lifting techniques when picking up a child? • Do staff comfort a child by sitting down and encouraging the child onto their knee, or sitting beside a cot or bed to comfort children? • Do staff encourage older, heavier toddlers to use steps and assist the child onto the nappy changing area, or into the cot, rather than lifting them? • Are staff trained in how to lift a child with special needs? • Are staff trained in how to manage wheel chair bound children i.e. on and off the bus; during toileting etc. • Are heavy objects stored at waist level? • Does the centre have a 2 person lift sticker system in place? • Are trolleys and casters used to assist in the moving of furnishings and heavy items? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Model Occupational Safety & Health Policy – Policies to Go By</i></p> <p><i>Risk Management for Child Care – Guild Insurance</i></p> <p><i>Managing OHS in Children’s Services – Lady Gowrie, Sydney</i></p>	<p>Occupational Safety & Health Regulations 1996 – Clause 3.4</p> <p>QIAS Principles: 5.5 OSHCQA Principles: 7.3 FDCQA Principles: 5.4</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Are beds lightweight and stackable? • Are items to be accessed by children stored at their waist level or lower? • Are tasks varied and rotated to ensure staff minimise the frequency of bending and lifting? • Are staff encouraged to work on their own fitness through an in-centre exercise program that includes simple floor exercises, stretches etc, that could be conducted with the children at the beginning of each day? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>		
<p>Protecting Children</p> <p><u>Aims:</u></p> <ul style="list-style-type: none"> • To protect children from abuse or neglect • To protect staff from allegations of abuse to children • To ensure children's health and well-being 	<ul style="list-style-type: none"> • Are individual children only released from the centre to authorised people? • Does the centre have a procedure for dealing with parents or authorised people who arrive at the centre to collect the child in a visibly intoxicated state? • Are families required to provide details of court orders in relation to the long term care, residence, contact persons, and welfare and development of the child? • Is the enrolling parent always contacted to obtain their authorisation before releasing the child to a non-enrolling parent? • Are all people who perform duties at the centre required to present a current criminal record check in accordance with the Working with Children Regulations 2005? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Model Establishing a Protective Environment; Access to the Centre Policies – Policies to Go By</i></p> <p><i>Choose with care – Building child safe organisations – Child Wise – www.childwise.net</i></p> <p>Protective Behaviours WA – www.protectivebehaviours.50megs.com</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulations: 20; 28, 29, 85, 95, 96</p> <p>Children & Community Services (Outside School Hours Care) Regulations 2006 – Regulations: 21; 27, 28, 66, 81</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 9; 12; 47; 79; 80</p> <p>QIAS Principles: 1.2; 1.3; 5.1; 5.2</p> <p>OSHCQA Principles: 7.1</p> <p>FDCQA Principles: 4.6</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Are all applicants screened through criminal record checking, previous employment record, and contacting referees to ensure their suitability to work with children? • Are all visitors/trades people screened when entering the centre to ensure they have a valid reason to be on site? • Does the centre layout ensure children can be viewed by more than one staff member at all times? • Is supervision of children away from the main play areas (i.e. bathrooms, toilets, nappy change areas, cubbies, tunnels, quiet areas, sleep areas) carefully monitored? • Are staff aware of the risks of being alone with children? • Do staff ensure volunteers, students and other visitors or trades people are never left alone with children? • Are child protection issues discussed regularly at staff meetings? • Are staff aware of the reporting requirements related to child protection? • Do staff participate in training on child protection? • Do staff obtain appropriate advice regarding children's inappropriate behaviour? 	<p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p>		<p>Working with Children (Criminal Record Checking) Act (2004) & Regulations (2005)</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Security</p> <p><u>Aims:</u> To protect:</p> <ul style="list-style-type: none"> • staff and children from intruders • the services equipment and contents • personal information records. 	<ul style="list-style-type: none"> • Does the service have a monitored alarm system? • Does your service's closing procedure check all doors and windows to ensure they are secured, and alarm systems to ensure alarms are properly set? • Are new staff fully inducted into the service's security systems? • Do you advertise the security you have in place? • Have you assessed potential access points to your service and taken precautions to secure these? • Do you have security lighting fitted at all entrances, side passages and car park area? • Do you encourage payments by cheque, credit card, EFTPOS or electronic transfer? • Is cash on the premises locked in a safe? • Is all cash, except petty cash, removed from the centre and banked each day? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Risk Management Guide for Child Care – Guild Insurance</i></p>	<p>Check your Insurance Policy for Guidelines</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
<p>Staff level of competence</p> <p><u>Aim:</u> Ensure employees are competent to perform the duties required of their position.</p>	<ul style="list-style-type: none"> • Are job descriptions and duty statements regularly reviewed and updated? • Are referees contacted to confirm an applicant's competence? • Are all staff fully inducted into their duties and the centre's policies and procedures? • Are new/inexperienced staff carefully monitored and supported by experienced staff? • Is staff performance regularly appraised? • Are staff encouraged to attend training and further develop their skills and knowledge? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Risk Management Guide for Child Care – Guild Insurance</i></p> <p><i>Model Policies on: Staff Appraisal Training & Development; Staff Orientation; Staff Selection – Policies to Go By</i></p> <p><i>Staff Recruitment & Evaluation Guide</i></p>	<p>Community Services Training Package – National Competency Standards: Cert III in Children's Services Cert IV in Out of School Hours Care Diploma of Children's Services</p>
<p>Staff pregnancy</p> <p><u>Aim:</u> To protect employee's occupational safety and health.</p>	<ul style="list-style-type: none"> • Are female carers advised they should have their immunity to rubella, measles, chicken pox & CMV infections tested before planning pregnancy? • Are employees advised they must tell the employer of their pregnancy as early as possible? • Are special health needs of pregnant employees considered and options to address these needs implemented? • Are pregnant employee's duties and work practices reviewed in conjunction with the staff team? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Model Managing Pregnancy within Child Care Policy – Policies to Go By</i></p> <p><i>Information Brief – Pregnancy – Commissioner for Equal Opportunity – www.equalopportunity.wa.gov.au</i></p> <p><i>Reproductive Health & Pregnancy – National Occupational Health & Safety Commission – www.nohsc.gov.au</i></p>	<p>Occupational Safety & Health Act 1984 – Clause 19; 20</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Are staff rosters reviewed to accommodate health issues such as morning sickness, increased fatigue, ante-natal visits, doctor's appointments etc? • Does the employer seek information from the pregnant employee's medical practitioner to assess fitness for work and alternative duties etc? • Are pregnant employees reminded of the importance of maintaining high levels of hygiene during pregnancy to limit the risk of contracting infections? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>The child care worker – hepatitis A and other infectious diseases – Viral Hepatitis Prevention Board (Australia)</i></p> <p><i>Risk Management Guide for Child Care – Guild Insurance</i></p> <p><i>Managing OHS in Children's Services – Lady Gowrie, Sydney</i></p>	
<p>Sun protection</p> <p><u>Aim:</u> To protect children and staff from the harmful effects of the sun.</p>	<ul style="list-style-type: none"> • Do children and staff wear legionnaire or broad brimmed style hats whenever they are outside? • Do children and staff wear clothing that protects as much of the skin as possible for outdoor activities? • Are outdoor activities set up in shady areas? • Are outdoor activities scheduled before 10 am and after 3 pm whenever possible? • Does the centre supply SPF 30+ broad spectrum sunscreen? • Is parent authorisation sought for the application of the centre's sunscreen product? 	<p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p> <p>YES [] NO []</p>	<p><i>Model Sun Protection Policy – Policies to Go By</i></p> <p><i>Sunsmart Childcare: A guide for service providers – The Cancer Council WA</i></p> <p><i>Managing OHS in Children's Services – Lady Gowrie, Sydney</i></p> <p>DCD Fact Sheets – <i>Sun, Safety & Protection</i> www.community.wa.gov.au</p>	<p>Children and Community Services (Child Care) Regulations 2006 – Regulations: 34; 76(1)(i)</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 24; 63</p> <p>QIAS Principles: 6.5 OSHCQA Principles: 7.2 FDCQA Principles: 4.1</p> <p>Sunsmart Centres Program – The Cancer Council WA</p>

Duty of Care Risk Register

Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Is sunscreen applied to staff and children 15 minutes before going outside? • When staff apply sunscreen to children, do they use a tissue or paper towel to limit cross infection? • Do staff role model appropriate sun protection behaviours and talk to children about ways to protect the skin from the sun? • Do staff understand that protection from UVR rays is a serious health issue? • Is up to date information and research in relation to UVR made available to centre staff? • Are sun protection posters displayed at the centre? 	<p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p>		
<p>Transporting children</p> <p><u>Aim:</u> To ensure the safety of children and staff, whilst being transported in the centre's motor vehicles.</p>	<ul style="list-style-type: none"> • Are parents informed of the kinds of vehicles which may be used to transport children? • Is parent authorisation obtained before children are transported in a motor vehicle? • Are children carefully supervised when walking to and alighting a motor vehicle? • Are children always seated and restrained by seat belts or safety capsules, at all times a vehicle is in motion? 	<p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p>	<p>DCD Fact Sheet – <i>Transporting children</i> www.community.wa.gov.au</p> <p><i>Model Transport Procedures – Policies to Go By</i></p> <p><i>Risk Management Guide for Child Care</i> – Guild Insurance</p> <p>KidSafe WA – www.kidsafewa.com.au</p>	<p>Children & Community Services (Child Care) Regulations 2006 – Regulations: 66, 89, 91</p> <p>Children & Community Services (Outside School Hours Care) Regulations 2006 – Regulations: 46, 69, 75</p> <p>Children & Community Services (Family Day Care) Regulations 2006 – Regulations: 53; 74</p>

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Key Risks	Questions to ask	Centre Check <i>Tick YES or NO</i>	Resources	Industry Benchmarks
	<ul style="list-style-type: none"> • Are volunteer drivers and bus operators required to sign a written contract detailing the responsibilities and requirements of their contract to transport children for the centre? • Are drivers required to provide a police clearance prior to being contracted? • Do all vehicles used to transport children meet all relevant insurance, taxation and vehicle licence conditions? • Does the centre have written procedures in the event of a breakdown, accident or other emergency? • Does the centre have written procedures to protect children arriving and departing in vehicles using the centre car park? 	<p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p> <p style="text-align: center;">YES [] NO []</p>		<p>QIAS Principles: 5.2; 5.3; 5.4 OSHCQA Principles: 7.2 FDCQA Principles: 4.1</p> <p>Road Traffic Code 2000</p>

DUTY OF CARE – Article by Marilyn Hopkins, Hopkins and Associates Lawyers, Perth WA

What do we mean by “Duty of Care”?

John Donne, a 16th Century poet, wrote “No man is an island”. What he meant, of course, is that we cannot live in isolation. Throughout our lives, unless we become hermits, we must interact with other people. As soon as we do this, however, it becomes inevitable that we will take on certain obligations towards those people.

It is generally accepted that those in authority have responsibility for those in their charge. For example, teachers for their students, parents for their children, employers for their employees. This responsibility is not limited to those in authority, however.

In 1932, a UK court had to consider a case which involved some particularly nasty snails which found their way into a glass of ginger beer. The lady who consumed the ginger beer suffered from nervous shock as a result of seeing the snails at the bottom of her glass and, in a landmark case, she brought an action against the publican who had served her the drink. She was able to establish that the publican owed her a duty of care and that he had breached that duty of care by unwittingly allowing the snails to get into her glass. After great deliberation, the court upheld the unfortunate lady’s claim and the doctrine of “duty of care” was borne.

Since 1932, the courts have been full of plaintiffs claiming that a duty of care has been owed to them by someone and that the person has been negligent in observing that duty of care and has, as a result, breached that duty. We are all now very familiar with where that 1932 case had led us, namely into a huge amount of litigation where we see councils being sued for failing to erect signs warning of pending dangers, publicans being sued for allowing intoxicated persons to drive off from their premises and home owners being sued when a trespasser trips over some object left in an awkward place in their own home.

Recognising when Duty of Care exists

How do we know when a duty of care is owed to someone, apart from in the very obvious circumstances? One of the difficulties in trying to work this out is that courts always do it with the benefit of hindsight. Whether a duty of care is owed or not very much depends on the facts of the matter, not least, the positions of the people involved.

For example, an expert giving advice to a non-expert can be expected to have a duty of care to the non expert. The expert is considered to have superior knowledge and the non expert rightfully expects to be able to rely on that superior knowledge. The expert thus assumes a duty of care in giving the advice and, if that advice is given negligently and without care, then the expert can expect a court to find that the duty of care has been breached.

Consequences of breaching a Duty of Care

Historically, a breach of a duty of care, once proved, generally leads to an award of damages to the injured party. In this country, damages tend to be awarded only to compensate the injured party for their financial loss.

We are all familiar, however, with the level of damages awarded by juries in American courts who are able to penalise defendants in cases where a duty of care has been breached by awarding exemplary damages. The reasoning behind such awards is intended to discourage others from breaching their duty of care. Luckily for most defendants in this country, exemplary damages are almost unheard of and damages are only awarded by judges.

The Duty of Care for workers in Child Care

It is very obvious that workers in child care owe a duty of care to the children in their care. Carers hold themselves out as being experts in their field, trained in the care of children. Children are generally unable to care for themselves and rely on the Carer to ensure that they are properly cared for.

It is not just those children to whom the duty is owed, however, but also the parents of those children. The Carer, once again, holds themselves out as being properly trained in the care of children and parents rightfully expect the degree of expertise the Carer has to be used properly in the care of their children. As a consequence, carers also owe a duty of care to the parents of the children in their care.

Different levels of Duty of Care

The level of the duty of care owed can differ depending on the status of the person claiming that a duty is owed. A practical example to demonstrate how different levels of duty may apply is say where a real estate agent may be selling a property which requires some renovation. If the potential purchasers are a young inexperienced couple, then the real estate agent has a high duty of care to ensure that the couple understand what they are taking on before they enter into a contract. If the potential purchaser is a builder, however, the duty of care owed to that purchaser may be far lower, simply because of the builder's own level of expertise.

It is quite obvious that an extremely high duty of care is owed to children generally because of their inability to care for themselves. Understandably, a much higher duty of care will be owed to an infant who can do nothing for themselves than to a child of school age who is able to attend to their own needs, within reason.

Proving a Duty of Care exists

Before any claim for negligence or breach of duty of care may be upheld by a court, the court must first be convinced that a duty of care existed at all. The court takes into account all the circumstances. The court tries to determine what a reasonable person would have expected in the circumstances which prevailed at the time. Of course, the court has the benefit of hindsight and it is often very difficult to look at a certain set of circumstances as if you were looking at them for the first time and not with the benefit of knowing what the outcome of those particular circumstances was. It is far easier to understand what a reasonable person would have expected when all the facts are known, rather than before all the facts are known.

In the area of child care, it is not difficult to see that proving a duty of care existed will be reasonably easy, particularly when a child suffers an injury. The younger the child, the higher the level of duty of care and the more likely a court is to find that a duty of care exists.

Proving a breach of the Duty of Care

Once it is established that a Carer has a duty of care, the next step for any claimant is to prove that the Carer breached that duty of care. To do this, a claimant must show that the Carer has been negligent in some way in observing the duty of care.

Again, courts will look at what a reasonable person would have done in the circumstances. Again, however, the circumstances are looked at with the benefit of hindsight.

The child care service not only has to be careful to comply with the written obligations set out in any agreement they may have with their sponsoring, operating or funding body, any contract with a parent or any legislation or licensing rules, but also to comply with any obligations which can be implied simply because of the duty of care owed to the child. Failure to comply with any written or implied obligations will make proving a breach of duty of care very easy for any complainant.

Proving a loss as a result of breach of the Duty of Care

Proving loss is not always quite as simple as it seems. First of all, the loss suffered must have been foreseeable. A fairly simple example would be where a child has an accident at the child care service. Let us suppose that the accident resulted because of an obvious breach of the Carer's duty of care to the child. An ambulance is called and the child is transported to hospital. The Carer telephones one of the parents to let them know the child is on the way to hospital. The parent panics and immediately races to the hospital at high speed. The parent goes through a red light on the way to the hospital and has a serious accident and loses the use of their legs for 3 months and is unable to work.

The question which then arises is the extent of the loss the parent and child are able to claim. The court will look at what was a foreseeable loss and what was not. It is quite obviously foreseeable that there will be some medical expenses for the child and perhaps some extra care required. Where the argument is likely to arise is if the parent claims the loss of 3 months' wages and the parent's own medical expenses on the basis that this loss was incurred as a result of the child's accident and that it was foreseeable that the parent would suffer this loss in those circumstances. Only a court can decide what is a foreseeable loss and the court will make its decision based on what a reasonable person would have done in all the circumstances.

It may seem to us reasonable that, if a person contributed to their own loss, they should not be able to claim for that loss. More and more these days, however, we are seeing courts disregard the need for us to be responsible for our own actions and we are, instead, seeing damages awarded to claimants without any real acknowledgement of the part their own negligence has played in contributing to their loss.

Conflicts

There is one issue which can, and often does, give cause for concern for child care workers. This is where the duty of care conflicts with other duties the Carer has. An example of this will be where the Carer has a duty of confidentiality to the children in their care and to the parents of those children. A Carer may become aware of an issue which would normally require complete confidentiality, but failing to disclose the information to the parents of other children in their care could put those children at risk and thus cause the Carer to breach the duty of care to those other children.

Duty of Care Risk Register

The two duties conflict and, unfortunately, it is not always the case that one duty automatically has priority over the other. A decision to observe one duty could result in a breach of the other. Carers sometimes find themselves in an unenviable position and the need to protect the other children in their care may see them becoming obliged to breach their other duties.

When placed in this position, the Carer must seek advice, either from their sponsoring, operating or funding body, where there is one, or from their legal advisor.

Conclusion

In conclusion, there is no doubt that those working in the child care industry are very much at risk of claims for breaches of duty of care.

Services must ensure that they carry adequate insurance and comply with the terms of the insurance policy.

It also must go without saying that compliance with all of the Carer's obligations under any employment, sponsorship or operating contract, any contract with a parent and the rules of any licensing body is imperative.

Additional Resources

Duty of Care – Video – Judy McGowan – Children’s Services Support Unit 1996 – available through RUCSN Resource Centre

Duty of Care Issues Forum – Video or DVD – Children’s Services Support Unit 2005 – available through RUCSN Resource Centre

Administering of Non-Prescription Medication Forum – Video – Children’s Services Support Unit 2004 – available through RUCSN Resource Centre