This fact sheet outlines the criminal history requirements for Victorian family day care services under the National Quality Framework. Services must meet the requirements of the Education and Care Services National Law Act 2010 (National Law), the Education and Care Services National Regulations 2011 (the National Regulations) and the National Quality Standard (Schedule 1 of the National Regulations). The National Law and the National Regulations are available on the Australian Children’s Education and Care Quality Authority website www.acecqa.gov.au.

In this fact sheet the term ‘criminal history’ is used as a general term to describe any of the criminal history checks and statements required under the National Quality Framework in order to assess the suitability of persons who manage or control an education and care service or who are staff members or educators of an education and care service.

**Why is criminal history important?**

Criminal history is considered to check the suitability of persons working with children. Requirements to check criminal history set in place safeguards that helps ensure people working with children are suitable for the role, having regard to the security, health, safety and welfare of those children.

The criminal history requirements for persons in approved education and care services varies according to the role the person has in the education and care service and the working with children law in the relevant jurisdiction.

The Regulatory Authority is required to collect criminal history information from applicants for provider approvals, persons with management or control of an education and care service and certified supervisors. This information is assessed as part of the determination of fitness and propriety of applicants.

In addition, in Victoria approved providers or persons in day-to-day charge of an education and care service must ensure that they have read, prior to engagement or registration as a family day care educator, the working with children check and criminal history record check for family day care educators (regulation 358 and 359). The approved provider of a family day care service must take reasonable steps to ensure that family day care educator assistants and persons aged 18 years and over who reside at a family day care residence are fit and proper persons to be in the company of children (regulation 163).

The National Law and National Regulations set out the requirements of the approved provider of a family day care service in reading and recording criminal history information for family day care educators and persons aged 18 years and over who reside at a family day care residence.

Approved providers must also ensure prescribed details of criminal history checks are recorded in the register of family day care educators (regulation 153) and records of staff, family day care co-ordinators and family day care educator assistants (regulations 154).

**Criminal history checks**

**Working with Children Check**

A working with children check refers to a notice, certificate or other document granted to, or with respect to, a person under a working with children law. In Victoria a working with children check refers to an assessment notice or card granted under the Working with Children Act 2005. The working with children check is valid for five years (unless suspended or revoked sooner) and provides employers with the ability to verify the validity of a working with children check at any time. A person moving from one jurisdiction to another jurisdiction must comply with the relevant working with children law in that State.
A person who is registered as a teacher with the Victorian Institute of Teaching under the *Education and Training Reform Act 2006* is not required to have a working with children check. However, the register kept under the *Education and Training Reform Act 2006* (the Victorian Institute of Teaching Register) must be checked to ensure that the person is registered as a teacher.

**Criminal history record check**

A criminal history record check means a full disclosure Australia-wide criminal history record check, issued by a police force or other authority of a State or Territory or the Commonwealth and commonly known as a ‘police records check’.

**Criminal history statements**

**Criminal history statement**

A criminal history statement refers to a statement made by an individual that declares whether the individual has been convicted in Australia of any offences relevant to a person seeking to work with children; and includes details of those convictions (regulations 4 and 46).

**Overseas criminal history statement**

An overseas criminal history statement refers to a statement made by an individual, that states whether the individual has been convicted outside Australia of any offences relevant to a person seeking to work with children and includes details of those convictions. This is required if an individual has lived and worked outside Australia at any time within the previous 3 years (regulation 4).

**Approved providers and certified supervisors**

Persons applying to be an approved provider, a person with management or control or a certified supervisor must provide the following criminal history information as part of the determination of fit and proper person by the Regulatory Authority (section 13).

**Approved provider**

An application for a provider approval submitted to the Regulatory Authority in Victoria must include:

- a copy of the applicant's current working with children check or proof that the applicant is registered as a teacher with the Victorian Institute of Teaching and
- a criminal history record check issued not more than 6 months before the date of the application and
- a criminal history statement made by the applicant in relation to the period from the date on which the criminal history record check was issued to the date of the application and
- if the applicant lived and worked outside Australia at any time within the previous 3 years, an overseas criminal history statement made by the applicant (regulations 14 and 16).

Once granted, a national provider approval will enable a person to operate one or more approved services in any jurisdiction. If an approved provider from another jurisdiction is directly providing education and care to children in Victoria they will be required to apply for a working with children check under the *Working with Children Act 2005*.

**Certified Supervisor**

An application for a Certified Supervisor submitted to the Regulatory Authority in Victoria must include either:

- a copy of the applicant's current working with children check or proof that the applicant is registered as a teacher with the Victorian Institute of Teaching or
- a criminal history record check issued not more than 6 months before the date of the application and
  - a criminal history statement made by the applicant in relation to the period from the date on which the criminal history record check was issued to the date of the application and
  - if the applicant lived and worked outside Australia at any time within the previous 3 years, an overseas criminal history statement made by the applicant (regulation 46).

A supervisor certificate is ongoing, is not attached to a service and is valid in all jurisdictions. Certified supervisors are required to comply with the relevant working with children law in the jurisdiction where they are employed.
Family Day Care Educators

The approved provider, nominated supervisor or person in day to day charge of the education and care service must, prior to engaging or registering the person as a family day care educator:

- read and consider a person’s current criminal history record check issued not more than 6 months before the date of the application (regulation 359) and
- read and consider a person’s current working with children check (regulation 358).

It is advised that the currency of working with children checks be checked regularly.

Residents at family day care residence

The approved provider of a family day care service must take reasonable steps to ensure that a person aged 18 years and over who resides at a family day care residence is a fit and proper person to be in the company of children. A person whose usual place of residence is a family day care residence is to be considered as residing in the residence regardless of whether that person is present when education and care is being provided. In order to ensure the health, safety and wellbeing of children approved providers must ensure persons aged 18 years and over who reside at a family day care residence are fit and proper.

In assessing each person as fit and proper an approved provider must consider one of the following in respect of the person:

- a criminal history record check issued not more than 6 months before it is considered; or
- a current working with children check or
- a current teacher registration (regulation 163).

Family day care educator assistants

The approved provider of a family day care service must take reasonable steps to ensure that a family day care educator assistant is a fit and proper person to be in the company of children. In assessing each person as fit and proper an approved provider must consider one of the following in respect of the person:

- a criminal history record check issued not more than 6 months before it is considered; or
- a current working with children check or
- a current teacher registration (regulation 163).

Registers and Records

The approved provider of a family day care service must keep at its principal office a register of each family day care educator and any person engaged by or registered with a family day care service to educate and care for a child (section 269).

Register of family day care educators

The approved provider of a family day care service must ensure that the register of family day care educators includes, among other information, a record of the identifying number and expiry date of a current working with children check for each family day care educator and the date that the working with children check was sighted by the approved provider or nominated supervisor of the service (regulation 153).

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1. If a person does not hold an working with children check and attains the age of 18 years and has applied for a working with children check the person is taken to hold the working with children check until the application is determined (regulation 163). In this circumstance, education and care services should ensure persons who have attained the age of 18 years and who have been taken to hold a working with children check are not left unsupervised with children receiving education and care in a family day care residence at any time.

2. If a person who does not hold a working with children check and attains the age of 18 years and has applied for a working with children check the person is taken to hold the working with children check until the application is determined (regulation 165). In this circumstance it is advised the family day care educator assistant does not work unsupervised with children receiving education and care in a family day care residence until the working with children application is determined.
Residents at family day care residence

The register of family day care educators must include the following information for persons aged 18 years and over who normally reside at the family day care residence. This register must record the identifying number and expiry date of an individuals working with children check or record of criminal history or teacher registration, along with the date that the check, card, record or registration was sighted by the approved provider or nominated supervisor of the service (regulation 153).

Record of family day care staff, family day care co-ordinators and family day care educator assistants

The approved provider of a family day care service must keep a record of staff, of family day care co-ordinators engaged by the service and of family day care educator assistants approved by the service that includes among other things:

- the identifying number of the working with children check or record of criminal history or, if applicable, teacher registration of the educator assistant and the date of expiry of that check, record or registration and
- the date that the check, card, record or registration was sighted by the approved provider or nominated supervisor of the family day care service (regulations 154,146 and 147).

A staff member is defined under the National Law as any individual (other than a nominated supervisor or volunteer) employed, appointed or engaged to work in or as part of an education and care service (section 5).

How can a working with children check be checked for currency?

The currency of a working with children check should be checked regularly and may be checked at www.online.justice.vic.gov.au/wwc/wwc-online-check.

How is the register for the Victorian Institute of Teaching checked?

The Victorian Institute of Teaching Register may be checked at www.vitonline.vit.vic.edu.au/vitis/prod/register.nsf.

What is a family day care service?

An education and care service that is delivered through the use of 2 or more educators to provide education and care for children in residences whether or not the service also provides education and care at a place other than a residence.

Where can I find more information?

- Australian Children's Education and Care Quality Authority website: www.acecqa.gov.au
- Fact sheets
  Fact sheets for Victorian education and care services operating under the National Quality Framework can be found at the website: www.education.vic.gov.au/licensedchildservices/NQF
- The Regulatory Authority in Victoria
  The Department of Education and Early Childhood Development, Service Development Division can be contacted on 1300 307 415 or by email at: licensed.childrens.services@edumail.vic.gov.au