Considering a person’s criminal history is an important part of assessing whether that person is suitable to be involved with the education and care of children. This fact sheet provides a summary of the criminal history requirements of the Education and Care Services National Law Act 2010 (National Law) and the Education and Care Services National Regulations 2011 (National Regulations) and National Quality Framework in relation to the following:

- Working with Children Checks and the Victorian Institute of Teaching (VIT) registration requirements for people engaged or employed at a family day care service.
- Fitness and propriety assessment for approved providers and certified supervisors.

Definitions

- A family day care educator assistant - a person engaged by or registered with a family day care service to assist family day care educators.
- A family day care co-ordinator - a person employed or engaged by an approved provider of a family day care service to monitor and support the family day care educators who are part of the service.
- A family day care educator - an educator engaged by or registered with a family day care service to provide education and care for children in a residence or an approved family day care venue.
- A family day care service - an education and care service that is delivered through the use of two or more educators to provide education and care for children in residences whether or not the service also provides education and care to children at a place other than a residence.
- Staff member - includes individuals (other than the nominated supervisor and volunteers) employed, appointed or engaged to work in or as part of education and care service.
- Criminal history - a collective term to refer to the Working with Children Check, criminal history check and criminal history statement as required by the National Quality Framework.
- Working with Children Check – this is issued by the Department of Justice in accordance with the Working with Children Act 2005 (see ‘Working with Children Checks’ section below for detail).

Working with children checks

What is a Working with Children Check?

In Victoria, a Working with Children Check in an ongoing assessment by the Department of Justice of a person’s eligibility to hold a Working with Children Check card. A Working with Children Check card is issued to a person after an assessment of their criminal history and a finding that they are suitable for child-related work has been made. Working with Children Checks are managed by the Department of Justice in accordance with the Working with Children Act 2005. Once a card has been issued, the cardholder will be subject to ongoing criminal history assessments while the card is valid.

The Working with Children Check is valid for five years and for any further extension of time specified in the Working with Children Act 2005 (unless suspended or revoked sooner). Services are able to verify at any time that a Working with Children Check is valid by referring to the Department of Justice Working with Children Check website - www.workingwithchildren.vic.gov.au/home/
To meet the requirements of the National Law and National Regulations, a current Working with Children Check card or verification that the person’s Working with Children Check is current via the Department of Justice Working with Children Check website is required. The stamped receipt issued by the Department of Justice on lodgement of an application for a Working with Children Check is not acceptable.

It is an offence under the Working with Children Act 2005 to knowingly undertake child-related work or to engage a person in child-related work without a current assessment notice or card. This may result in a fine or imprisonment.

A person moving from one state or territory to another must comply with the relevant working with children law in that state or territory.

Notification of suspension or cancellation of a Working with Children Check

An approved provider must notify the Regulatory Authority in writing of the suspension or cancellation of a Working with Children Check card held by a nominated supervisor or certified supervisor. Failure to comply with this requirement is an offence under the National Law (section 173).

Registered teachers

Persons who are registered as a teacher with the VIT in accordance with the Education and Training Reform Act 2006 is not required to have a current Working with Children Check. Instead, the person’s teacher registration must be confirmed as current via the VIT Register (see www.vitonline.vit.vic.edu.au/vitis/prod/register.nsf) and a record of the identifying number and the expiry date of that registration must be kept on their staff record and the nominated supervisor’s staff record (regulation 147 and 146, respectively).

Notification of suspension or cancellation of a VIT registration

An approved provider must notify the Regulatory Authority in writing of the suspension or cancellation of a VIT registration held by a nominated supervisor or certified supervisor. Failure to comply with this requirement is an offence under the National Law (section 173).

Requirements for family day care educators and all other staff

Working with Children Checks

Approved providers must read, or ensure that the nominated supervisor or certified supervisor in day to day charge of the service has read a person’s current Working with Children Check before that person is engaged or registered as a family day educator at the service (regulation 358). The approved provider is also responsible for ensuring that all other staff, including family day care co-ordinators and family day care educator assistants (regulation 154), hold a current Working with Children Check or teacher registration (see above for details about teacher registration).

Approved providers must read, or ensure that the nominated supervisor or certified supervisor in day to day charge of the service has read, a person’s current Working with Children Check before that person is permitted to be a volunteer at the service (regulation 358).

Criminal History Records

Approved providers must also read and consider, or ensure that the nominated supervisor or certified supervisor in day to day charge of the service has read and considered, a person’s criminal history record before engaging or registering that person as a family day educator (regulation 359).
Requirements for residents at family day care premises

Residents to be Fit and Proper

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 (regulation 163). A person who normally resides at the 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 the person’s current Working with Children Check or current teacher registration (regulation 163).

Requirement to notify the approved provider of changed circumstances

Approved providers must require family day care educators to notify the provider if:

- a new person 18 years of age or over is residing or intending to reside at the educator’s family day care residences, or
- if a person’s circumstances have changed in such a way that may affect whether the person is a fit and proper person to be in the company of children (regulation 164).

Maintaining records

Register of Family Day Care Educators

The approved provider must keep at its principal office a register of each family day care educator and any other person engaged by or registered to educate and care for a child (section 269). The register must contain specific information, including:

- a record of the identifying number and expiry date of the Working with Children Check for each family day care educator engaged or registered with the service
- a record of the identifying number and expiry date of the Working with Children Check for each resident 18 years of age or over residing, or intending to reside, at the family day care educator’s residence. The record must also include the date that the Working with Children Check was sighted by the approved provider or nominated supervisor (regulation 153).

Staff records

The approved provider must also keep a record of staff that includes the identifying number and expiry date of the current Working with Children Check for family day carers, family day care co-ordinators and family day care educator assistants approved by the service in accordance with regulation 154 and nominated supervisors (regulation 146). In the case of family day care assistants, a record must also be kept of the date that the check was sighted by the approved provider or nominated supervisor (regulation 154(e)).

Fitness and Propriety – Criminal history requirements for approved providers and certified supervisors

Applying for provider approval

When applying to become an approved provider specific criminal history information must be submitted as a part of the application so that the Regulatory Authority may assess whether the person is fit and proper (section 13 and regulation 16).
To ensure all the necessary information is provided by applicants, applications for provider approval must be submitted using the Australian Children’s Education and Care Quality Authority (ACECQA) form, *Application for Provider Approval (PA01)* and be accompanied by the necessary *Declaration of Fitness and Propriety (PA02)* forms. Both forms are available at [www.acecqa.gov.au/provider-approvals](http://www.acecqa.gov.au/provider-approvals) and specify what supporting documents are required.

**Applying for a supervisor certificate**

A person applying to be a certified supervisor must submit specific criminal history information as a part of their application so that the Regulatory Authority may assess whether the person is fit and proper (section 109 and regulation 46).

An application for supervisor certificate must be submitted using the ACECQA form, *Application for supervisor certificate (CS01)*, and be accompanied by the Declaration of Fitness and Propriety (PA02) form. These forms are available at [www.acecqa.gov.au/provider-approvals](http://www.acecqa.gov.au/provider-approvals) and specify what supporting documents are required.

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. For example, educators who obtain a supervisor certificate outside of Victoria are required to comply with Victorian working with children legislation when they are employed by a Victorian service.

**Where can I find more information?**

- 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/childhood/providers/regulation/Pages/nqffactsheets.aspx](http://www.education.vic.gov.au/childhood/providers/regulation/Pages/nqffactsheets.aspx)

**Further information**

The Australian Children’s Education and Care Quality Authority (ACECQA) is the national, independent statutory authority governing the National Quality Framework.

Phone: 1300 422 327
Email: enquiries@acecqa.gov.au
Web: [www.acecqa.gov.au](http://www.acecqa.gov.au)

The Department of Education and Early Childhood Development is the Regulatory Authority in Victoria.

Phone: 1300 307 415
Email: licensed.childrens.services@edumail.vic.gov.au