

Declaration of fitness and propriety

(s10, 12 & 13 of the *Education and Care Services National Law Act 2010*)

Important information before you begin

You are required to fill in this form if you are:

- an individual applying to be an approved provider of education and care services
- a constituent individual member of a non-individual entity applying to be an approved provider of an education and care service. (Note - Constituent individual personnel include company directors, executive members of an association, and partners of a partnership)
- an individual who will have 'management or control' of an education and care service (operated by a non-individual provider) as defined by s5 of the Education and Care Services National Law Act 2010:
 - a. an officer of a body corporate, within the meaning of the Corporations Act 2001 of the Commonwealth, who is responsible for managing the delivery of an education and care service, or
 - b. a member of the executive committee of an eligible association who has responsibility, alone or with others, for managing the delivery of an education and care service, or
 - c. a partner in a partnership who has responsibility, alone or with others, for managing the delivery of an education and care service
 - d. in any other case, a person who has responsibility, alone or with others, for managing the delivery of an education and care service

Consideration of 'management or control' responsibilities may arise:

- a. when a new provider is seeking approval, OR
- b. when the membership of the governing body of an existing approved provider is changing/has changed.

Please refer to the Explanatory Notes on page 2 and 3 of this form when considering whether you are a person with 'management or control' of an education and care service.

If you are seeking to have a new provider approved, please submit this form with Form PA01 Application for Provider Approval.

Privacy statement

Regulatory Authorities and the Australian Children's Education & Care Quality Authority (ACECQA) are committed to protecting personal information in accordance with the Privacy Act 1988 and the Australian Privacy Principles.

Regulatory Authorities and ACECQA collect personal information (as defined by the Privacy Act 1988), including sensitive information, for the purposes of assessing your application or notification.

The information collected may be disclosed to other authorities and government agencies for a permitted purpose under the Education and Care Services National Law Act 2010 (the National Law), such as:

- promoting the objectives of the National Quality Framework
- enabling the other authority or agency to exercise its functions or powers under the National Law
- for research or the development of national, state or territory policy with respect to education and care services
- for a purpose relating to the funding of education and care services
- for a purpose relating to the payment of benefits or allowances to persons using education and care services.

Additionally, other authorities or government agencies may disclose information to Regulatory Authorities and ACECQA for a permitted purpose listed above.

Information disclosure is subject to the Privacy Act 1988 and information sharing protocols.

Regulatory Authorities, ACECQA and the Australian Government may publish information about you in accordance with the National Law.

Explanatory Notes

An Applicant Must be a Fit and Proper Person

Under s 12 of the National Law:

1. An applicant who is an individual must satisfy the Regulatory Authority that the applicant is a fit and proper person to be involved in the provision of an education and care service.
2. If the applicant is not an individual, the applicant must satisfy the Regulatory Authority that:
 - a. Each person who will be a person with management or control of an education and care service to be operated by the applicant is a fit and proper person to be involved in the provision of an education and care service, and
 - b. The applicant is a fit and proper person to be involved in the provision of an education and care service.

Under (2), the Regulatory Authority must be satisfied that each person with management or control of a service to be operated by the applicant is 'fit and proper' AND that the non-individual applicant (corporation, eligible association or partnership) itself is 'fit and proper'. In the case of a corporation, this would involve consideration of:

- the fitness and propriety of persons with management or control – which may include some or all of the board and, potentially, other key officers of the corporation, and
- the fitness and propriety of board members – who, together, control the corporation.

Who is a Person with Management or Control?

Section 5(1) of the National Law states that a 'person with management or control' in relation to an education and care service means:

- a. If the provider or intended provider of the service is a body corporate, an officer of the body corporate within the meaning of the Corporations Act 2001 of the Commonwealth who is responsible for managing the delivery of the education and care service, or
- b. If the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service, or
- c. If the provider of the service is a partnership, each partner who has the responsibility, alone or with others, for managing the delivery of the education and care service, or
- d. In any other case, a person who has the responsibility, alone or with others, for managing the delivery of the education and care service.

Who is an 'Officer' under the Corporations Act 2001?

Section 9 of the Corporations Act 2001 states that the 'officer' of a corporation means:

- a. A director or secretary of the corporation, or
- b. A person:
 - i. who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation, or
 - ii. who has the capacity to affect significantly the corporation's financial standing, or
 - iii. in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation), or



Declaration of fitness and propriety

(s10, 12 & 13 of the *Education and Care Services National Law Act 2010*)

- c. A receiver, or receiver and manager, of the property of the corporation, or
- d. An administrator of the corporation, or
- e. An administrator of a deed of company arrangement executed by the corporation, or
- f. A liquidator of the corporation, or
- g. A trustee/other person administering a compromise or arrangement made between the corporation & someone else.

What is the Difference between a Person in 'Day-to-Day Charge' and a Person with 'Management or Control'?

A person with 'management or control' is someone:

- a. Who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity, or
- b. Who has the capacity to affect significantly the entity's financial standing.

Therefore, while a person – such as a centre manager or nominated supervisor – may have 'day-to-day charge' of a service, they may not have 'management or control'.

Individuals should consider whether they satisfy one of these thresholds to determine whether they are required to complete this Form.



Declaration of fitness and propriety

(s10, 12 & 13 of the Education and Care Services National Law Act 2010)

Part A: Declarant Information

1. Please complete the following:

Details

Title: First name:

Last name: Mobile number:

Phone number: Fax number:

Email:

Date of birth: DD/MM/YYYY Place of birth:

Residential address

Address line 1:

Address line 2:

Suburb/Town:

State/Territory: Postcode:

Postal address

As above

Address line 1:

Address line 2:

Suburb/Town:

State/Territory: Postcode:

2. Please provide details of any former names or other names you may be known by:

Please attach evidence of change of name, such as a copy of a marriage certificate.

3. Please attach a copy of one of the following as evidence of your identity:

- a current passport, or
- a current driver's licence, or
- a current proof of age card

The regulatory authority may request additional types of identification



Declaration of fitness and propriety

(s10, 12 & 13 of the *Education and Care Services National Law Act 2010*)

Part A: Declarant information - continued

4. In the previous three years have you held any role with an education and care service or a children's service in any jurisdiction?

Yes ► **Please provide details of all roles in the table below and attach paper with further entries if required:**

Name of the service	Service location (State/Territory)	The nature of your role

No

5. Please select your state or territory from the table below and fill in/attach the required evidence:

Australian Capital Territory	<input type="checkbox"/> A copy of your current working with vulnerable people check or card
New South Wales	<input type="checkbox"/> A copy of your current working with children check OR <input type="checkbox"/> Fill in your working with children check clearance number [_____] AND <input type="checkbox"/> A copy of your national criminal history check, which includes your full name, and any former name you may be known by, and issued not more than six months before the date of this declaration.
Queensland	<input type="checkbox"/> A copy of your current working with children check or card
Tasmania	<input type="checkbox"/> A copy of your current working with vulnerable people registration card OR <input type="checkbox"/> Fill in your working with vulnerable people registration number [_____] AND <input type="checkbox"/> A copy of your national criminal history check, which includes your full name, and any former name you may be known by, and issued not more than six months before the date of this declaration.
Northern Territory Victoria Western Australia	<input type="checkbox"/> If held , a copy of your current working with children check or card OR if you are a registered teacher, proof of current teacher registration AND <input type="checkbox"/> A copy of your national criminal history check, which includes your full name, and any former name you may be known by, and issued not more than six months before the date of this declaration.
South Australia	<input type="checkbox"/> A copy of your current South Australian working with children check OR Fill in your working with children check unique ID number [SRN _____ - _____] AND <input type="checkbox"/> A copy of your national criminal history check, which includes your full name, and any former name you may be known by, and issued not more than six months before the date of this declaration.



Declaration of fitness and propriety

(s10, 12 & 13 of the Education and Care Services National Law Act 2010)

Part A: Declarant information - continued

6. If you have provided a criminal history record check, have you been convicted in Australia of any offences, relevant to a person seeking to work with children in the period from the date this check was issued to the date of this declaration?

Yes ▶ *Please provide details including the date and type of conviction:*

No Not applicable

7. Have you lived and worked outside Australia any time within the previous three years?

Yes ▶ *Please provide a statement about whether you have been convicted outside Australia of any offences relevant to working with children (write N/A if none)*

No

8. Have you ever been subject to a formal disciplinary proceeding or action under an education law of any Australian state or territory?

Yes ▶ *Please provide details including the date and type of action or proceeding and the outcome:*

No

9. Have you ever had any of the following actions taken against you under the A New Tax System (Family Assistance) (Administration) Act 1999 of the Commonwealth in relation to a child care service:

- Any sanction imposed under Section 200 of that Act
- Any suspension imposed under Section 201A of that Act
- Any infringement notice given under Section 219TSI of that Act

Yes ▶ *Please provide details including the date and type of action and the outcome:*

No



Declaration of fitness and propriety

(s10, 12 & 13 of the Education and Care Services National Law Act 2010)

Part A: Declarant information - continued

10. Do you have the management capability to operate an education and care service in accordance with this Law?

Yes - I am or have previously been a person with management or control of an education and care service (as listed in Question 4 of this form).



OR

Yes ► **Please attach evidence of your management capability:**

The Regulatory Authority may consider evidence of the management capability of a person when assessing their fitness and propriety. Evidence can include a resume or part of a resume that shows the roles (including duties) that demonstrate management capability or a qualification/certification. Please attach your tailored resume and/or your relevant qualification to this form before uploading. Evidence of management capability does not need to relate only to education and care services, or qualifications in education and care. The consideration here is 'management capability' and so evidence may be related to any previous expertise, experience or qualification in a leadership, governance, administrative or management role in:

- A business, or
- A not-for-profit organisation, or
- A sporting or social club, or
- A community-based committee.

This may include experience gained as a volunteer in a management capacity.

No

11. Have you ever been the subject of any proceeding in bankruptcy?

Yes ► **Please provide details, including:**

- a. Whether any actions have been taken against you under Part IV of the *Bankruptcy Act 1966* of the Commonwealth; and
- b. Whether you have made any debt agreement under Part IX of the *Bankruptcy Act 1966* of the Commonwealth; and
- c. Whether you have made any personal insolvency agreement under Part X of the *Bankruptcy Act 1966* of the Commonwealth.

No



Declaration of fitness and propriety

(s10, 12 & 13 of the *Education and Care Services National Law Act 2010*)

Part B: Declaration

I, _____ [insert full name of person signing the declaration] of,
_____ [insert address], am _____ [insert
position/title of applicant (for example, proprietor, director, partner, president)].

and I am

- An individual applying to be the approved provider of an education and care service, or a constituent individual member of a non-individual entity applying to be an approved provider of an education and care service,

and / or

- an individual who will have management or control of an education and care service (operated by a non-individual provider) as defined by s5 of the National Law:
- an officer of a body corporate, within the meaning of the *Corporations Act 2001* of the Commonwealth, who is responsible for managing the delivery of an education and care service, or
 - a member of the executive committee on an eligible association who has responsibility, alone or with others, for managing the delivery of an education and care service, or
 - a partner in a partnership who has responsibility, alone or with others, for managing the delivery of an education and care service, or
 - in any other case, a person who has the responsibility, alone or with others for managing the delivery of an education and care service.

I declare that:

1. the information provided in this form (including any attachments) is true, complete and correct
2. I am aware that under the Education and Care Services National Law (the National Law) penalties apply if false or misleading information is provided
3. I understand that the Regulatory Authority and/or ACECQA have the right (but are not obliged) to act in reliance upon the contents of this form, including its attachments
4. I have read and understood a provider's legal obligations under the National Law
5. I understand that an approved provider must notify the Regulatory Authority of any change relevant to the assessment of the approved provider's fitness and propriety in relation to the provision of an education and care service (refer section 174(1)(a) of the National Law)
6. the Regulatory Authority is authorised to verify any information provided in this form, including identifying information with the Issuer or Official Record Holder
7. I agree that the Regulatory Authority may serve a notice under the National Law using the contact details provided in this application, including the postal, street or email address or fax number (in accordance with section 293 of the National Law), and
8. I have read and understood the Privacy Statement at page 1 of this form.

Signature of person making the declaration: _____

Signed at: _____ on the _____



Declaration of fitness and propriety

(s10, 12 & 13 of the *Education and Care Services National Law Act 2010*)

Submitting this form

Please submit this form along with any required documentation to the relevant Regulatory Authority.

The contact details for each Regulatory Authority are available on the ACECQA website.

Please go to www.acecqa.gov.au/contact-your-regulatory-authority