

A GUIDE TO THE 'DECLARATION OF FITNESS AND PROPRIETY' FORM (AP02)

Children's Services Act 1996 and Children's Services Regulations 2020

The *Children's Services Act 1996* (Vic) (the Act) requires that all persons who are involved in operating an approved children's service in Victoria be a 'fit and proper person'.

Before an applicant (individual or non-individual) can be approved as a children's service provider or a 'person with management or control' they must satisfy the Regulatory Authority (the Department of Education and Training) that they are a 'fit and proper person'.

If the applicant is a non-individual then the organisation itself (corporation, eligible association, partnership etc.) must also be assessed for fitness and propriety. Depending on the type of legal entity, this would involve considering the fitness and propriety of board members and/or other key officers in the organisation as together they control the entity.

Completing the '*Declaration of Fitness and Propriety*' form (AP02) is the first step in this process.

When is a 'Declaration of Fitness and Propriety' form required?

- If you are an individual applying for Provider Approval to operate a children's service under the Act
- If you are a person who will have management or control of a children's service operated by a non-individual entity (company/trust/cooperative/school council/other) that operates a children's service such as:
 - An officer of a body corporate
 - A member of an executive committee of an eligible association
 - A partner in a partnership
 - Any other case where a person has the responsibility, alone or with others, for managing the delivery of a children's service.
- If you are requested to complete the form by the Regulatory Authority

Who is a 'Person with Management or Control'?

A Person with Management or Control has legal responsibility for the safety, health and wellbeing of children being educated and cared for at the service like the approved provider.

For different legal entities, people who may be a Person with Management or Control in relation to a Children's Service are listed below:

- a body corporate: an officer of the body corporate who is responsible for managing the delivery of the education and care service
- an eligible association: any member of the executive committee who has the responsibility for managing the delivery of the education and care service
- a partnership: any partner who has the responsibility for managing the delivery of the education and care service
- any other case: any person who has the responsibility for managing the delivery of the education and care service.

What is the difference between a ‘person with management or control’ and a ‘person in day-to-day charge’?

A person with management or control is different to a ‘person in day-to-day charge’:

- **A Person with Management or Control** has legal responsibility for the safety, health and wellbeing of children being educated and cared for at the service like the approved provider. They manage the delivery of the children’s service.
- **A person in day-to-day charge** must be appointed by the approved provider or a nominated supervisor to operate the service in accordance with the Children’s Services Regulations 2020 (the Regulations), and consents/agrees to this in writing. Examples are centre managers or nominated supervisors.

While a person, such as a centre manager or nominated supervisor may have ‘day-to-day charge’ of a service, they may not be responsible for managing the delivery of the children’s service like a ‘person with management or control’. Their responsibilities are equivalent to the responsibilities of any other staff under the Act and Regulations. Both terms are defined in section 3 of the Act.

DEFINITIONS

An Officer of a Corporation

Section 9 of the *Corporations Act 2001* (Cth) states that the ‘officer of a corporation’ means:

- A director or secretary of the corporation, or
- A person:
 - who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation, or
 - who has the capacity to affect significantly the corporation’s financial standing, or
 - 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
- A receiver, or receiver and manager, of the property of the corporation, or
- An administrator of the corporation, or
- An administrator of a deed of company arrangement executed by the corporation, or
- A liquidator of the corporation, or
- A trustee/other person administering a compromise or arrangement made between the corporation and someone else.

Other examples of office holders:

- a partner in the partnership if the entity is a partnership; or
- an office holder of the unincorporated association if the entity is an unincorporated association; or
- a person: who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity; or who has the capacity to affect significantly the entity’s financial standing.

The Department recommends you get independent legal advice about your individual situation.