

## Information Sheet – Fitness and Propriety

### What is ‘fitness and propriety’?

Fitness and propriety is a term which describes a person’s suitability to work with children or to be directly involved in the operation of a children’s service. This term may also be expressed as a person being a ‘fit and proper person’.

### Why is it necessary to check ‘fitness and propriety’?

Checking that those who work with children or are directly involved in the operation of a children’s service are fit and proper persons is a measure that helps to safeguard children in care against risks to their safety and well-being.

Section 16(3) of the [Child Care Act 2001](#) specifies that the Secretary must not grant a licence unless he/she is satisfied that the applicant or a holder of a licence is a fit and proper person to hold that licence. Section 15A also states that in order to determine whether the applicant or a holder of a licence is a fit and proper person, a number of other matters must be taken into account. These matters include a list of the people who must be suitable to fulfil their roles in regard to the child care service and an outline of a series of checks used to determine that suitability.

### What categories of people must undergo a ‘fitness and propriety’ check to demonstrate their suitability for a role?

- Applicants for a licence or holder of a licence (section 15A(2) (a)).
- Each director and other persons concerned in the management of the body operating the child care service (section 15A(2) (b)).
- Responsible person (section 15A(2) (c)).
- Persons in charge (section 15A(2) (d)).
- Child carers (section 15A(2) (d)).
- Ancillary staff (section 15A(2) (d)).

- Spouses or close relatives (of any of the people on the list) who may have contact with the children in care (section 15A(2) (e)).
- Any persons who may have frequent or extended contact with children in care (section 15A(2) (f)).

Under the [Child Care Act 2001](#), responsible persons may be:

- An individual, other than the person in charge of the child care service, to whom is assigned by the licensee, the general responsibility for, and supervision of the operations of, the provision of the child care service under the licence; or
- Any other body or individual, other than the person in charge of the child care service, who has the authority to give directions and make decisions in respect of the management of that child care service.

People fulfilling this role include:

- co-ordinators who have responsibility across a number of services (but who are not the licensee, nor the person in charge);
- third party managers;
- franchisees/franchisors.

### Who is responsible for determining whether someone is a ‘fit and proper’ person?

The responsibility for determining a person’s fitness and propriety may fall both to the [Education and Care Unit \(ECU\)](#) and to the licensee of the service. For instance, although the [Child Care Act 2001](#) states that all staff must be fit and proper, it is not appropriate for authorised officers from the ECU to assess all child care staff across Tasmania.

The licensee must therefore ensure that the staff they employ are fit and proper persons. This includes the licensee ensuring that every staff member with the service maintains a current [Tasmanian Working with Vulnerable People registration](#). The same applies to volunteers, students and regular visitors.

In addition, the service is expected to have sound selection processes in place. Consideration of the processes that the licensee has in place to ensure that the staff are fit and proper, will help the ECU to determine whether the licensee is fit and proper.

The ECU will check the fitness and propriety of the persons in the following roles:

- licence applicants/holders (or 2 licensee representatives, where the applicant is a body, e.g. incorporated committee, government agency, private company);
- responsible persons; and
- persons in charge

### What processes are in place to ensure that persons are 'fit and proper'?

Administrative processes are in place to assist the ECU to assess a person's 'fitness and propriety'.

These include:

- Verifying the individual holds a current [Tasmanian Working with Vulnerable People registration](#);
- Verifying the applicants understanding of their duty of care in relation to the operation of the service;
- Verifying the applicants understanding of their legislative responsibilities under the [Child Care Act 2001](#) (refer to Part 4 'Duties and Offences' in the Act);
- Verifying referee reports;
- Completion of relevant Declarations Form(s);
- Conducting checks against the ECU database(s) and register(s);
- ECU conducting enquiries with interstate child care licensing colleagues and other agencies as required.

Not all of these administrative processes will be relevant to all the persons listed in 15A(2)(a)-(f). See the table below to see which checks may apply to the different roles.

	<i>Working with Children Check</i>	<i>Declaration Form</i>	<i>ECU Check Against Database and register</i>	<i>Referee Reports</i>	<i>Interstate And inter-Agency Enquiries<sup>5</sup></i>
Applicants or holder of a licence (licensee)	✓	✓	✓	✓	✓
Licensee representatives <sup>2</sup>	✓	✓	✓	✓	✓
Directors/persons involved in management (who are not the Licensee representatives or Responsible persons) <sup>3</sup>	✓		✓		✓
Responsible persons	✓	✓	✓		✓
Persons in charge	✓	✓	✓		✓
Carers, ancillary staff, spouses/close relatives, volunteers and others <sup>4</sup>	✓				

<sup>2</sup> For further information on the role of licensees and licensee representatives, see the information sheet *Legislative Authority and Responsibilities for Licence Applicants*.

<sup>3</sup> Where an organisation may be responsible for a number of different programs, of which child care may only be one, e.g. local government or large community or private organisations, checks are only required for those directly involved in the management of the child care service.

<sup>4</sup> In some circumstances, it may be necessary to conduct other checks, e.g. checks against the ECU database(s) or register(s).

<sup>5</sup> Interstate and interagency enquiries will mostly be required to follow up concerns, including where:

- the ECU has received a report from the child care sector or elsewhere that a person should not be considered fit and proper or,
- one or more of the other checks for fitness and propriety, e.g. Working with Vulnerable People registration has raised issues relevant to fitness and propriety, and therefore further clarifying information may need to be sought in regard to that specific issue or on a more general basis.

## **What is a current Tasmanian Working with Vulnerable People registration?**

A [Tasmanian Working with Vulnerable People registration](#) is a compulsory record check required under the [Tasmanian Registration to Work with Vulnerable People Act 2013](#) (Registration Act) for people who engage in child-related work in Tasmania.

Tasmanian Working with Vulnerable People registration has replaced safety screening.

The [Tasmanian Working with Vulnerable People registration](#) is carried out to identify individuals who may pose a risk of harm to children. Those individuals, who are deemed unsuitable, will not be able to work with children in a range of regulated activities. 'Child care services' is a regulated activity under the Registration Act.

This intent of this Act is to reduce the likelihood of harm to children through background checking and risk assessment of persons working with children. Importantly, the check provides the ability to quickly remove a person from child-related activities if an event occurs that might indicate a risk of future harm to children.

## **What is the Declaration Form?**

The Declaration Form provides a format where those required to complete it are able to demonstrate their knowledge of and commitment to implement the requirements under the [Child Care Act 2001](#) and the licensing standards, to make disclosures about a number of matters and provide information about relevant qualifications and experience. If there are issues arising from the Declaration Form, the ECU may consult with other agencies as required.

## **When is the Declaration Form required to be completed and does it need to be renewed?**

Generally, the Declaration Form only needs to be completed once, prior to the first time that a person takes on a relevant role. Appointment to the role may or may not coincide with the licensing assessment process for the child care service. The person is advised to keep a photocopy so that they can regularly check it to ensure that none of the information has changed since it was submitted.

If any changes occur since the original documentation was submitted, or if a person commences a new role (e.g. a Person in charge becomes the Licensee, or if a licensee representative then represents a different service operator), a new Declaration Form **must** be completed and submitted. A new form is not required when a Person in charge moves to another service.

## **What database(s) and register(s) checks does the Education and Care Unit conduct?**

Initial checks are conducted prior to an individual taking on the relevant role, and then with each licence renewal. Permission for the ECU to conduct these checks is covered through the Declaration Form.

The ECU database keeps a record of services and personnel under the [Child Care Act 2001](#). The database may assist ECU staff to determine whether relevant persons have worked in child care in Tasmania, and in what role.

The [National Quality Agenda IT System](#) (NQAITs) keeps a record of services and personnel under the [Education and Care Services National Law \(Tasmania\)](#).

In addition, the ECU records complaints received by the ECU that are required to be investigated under the [Child Care Act 2001](#) or the [Education and Care Services National Law](#).

## **What is involved in the Referee Report?**

Information from referees will be sought primarily in relation to whether the applicant is of good repute in relation to his or her character, honesty and integrity.

Applicants are to provide the name and contact details for at least two referees. These referees are not to be related to the applicant by birth or marriage, or be a current employee, or fellow director, committee member, officer or shareholder.

## **How often are referees used?**

Generally, referee reports will only be required once, prior to the person taking on the role of licensee or licensee representative. The licensee/licensee representative applicant(s) will be asked within the Declaration Form to provide the names and contact details of referees. The ECU will then send a form to these referees for their completion and return to the Unit.

In order to ensure that the nominated referees are willing to provide the Department with advice in a timely manner, it is preferable that licence applicants have already discussed and sought agreement from the referees prior to forwarding the referees' names to the Department.

### **What are the checks with interstate colleagues or other agencies?**

As the [Child Care Act 2001](#) includes a number of references to checking matters at an interstate level, (e.g. offences against relevant interstate Acts and regulations; whether a person has been refused a licence interstate or had it suspended or cancelled, it is necessary to be able to check with interstate colleagues whether they hold any information that may assist the Secretary in determining 'fitness and propriety'. The same applies where checks are required that involve another agency within this State.

The information gained through this process will be assessed to determine whether it should have any bearing on the issue, or otherwise, of a licence.

The ECU may seek further advice from the Department's legal advisor as necessary.

### **When is the check conducted?**

Permission for the ECU to conduct this check is covered through the Declaration Form. At this stage, this check will only be completed should there be any concerns that may be better addressed through seeking information from other agencies.

### **How will an applicant know whether he/she has been approved in their role or whether there were any issues arising from the checks and administrative processes completed by the ECU?**

If there are any issues arising from any of the checks, an officer from the ECU will contact the person to discuss the matter in question. Issues may be resolved at this stage. The ECU will inform them in writing that they have or have not met the requirements to satisfy the fitness and propriety check for the particular role that they intend to fulfil, (e.g. licensee, responsible person, person in charge, member of a service operator).

It is possible that the Secretary could refuse to issue a licence on the basis of a fitness and propriety assessment. If this occurred, the aggrieved person may appeal under Section 50(2) of the [Child Care Act 2001](#).

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