

Western Australia

## **Child Care Services Act 2007**

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## Child Care Services Act 2007

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Western Australia

## **Child Care Services Act 2007**

**An Act to regulate the provision of child care services, to make consequential amendments to the *Children and Community Services Act 2004* and other Acts, and to provide for related matters.**

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Child Care Services Act 2007*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### **3. Terms used in this Act**

In this Act, unless the contrary intention appears —

***applicant*** means —

- (a) if a licence is applied for on behalf of a public authority, the public authority; or
- (b) otherwise, a person who applies for a licence;

***application*** means an application for a licence;

***assessment notice*** has the meaning given in the *Working with Children (Criminal Record Checking) Act 2004* section 4;

***carer*** has the meaning given in the *Children and Community Services Act 2004* section 3;

***CEO*** means the chief executive officer of the Department;

***child*** means a person who is under 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently under 18 years of age;

***child care service*** has the meaning given in section 4;

***corporate applicant*** means an applicant that is a body corporate other than a public authority;

***criminal record check*** means a document issued by the Australian Federal Police or another body or agency approved



by the CEO that sets out the criminal convictions of an individual for offences under the law of this State, the Commonwealth, another State or a Territory;

**Department** means the department of the Public Service principally assisting the Minister in the administration of this Act;

**departmental officer** means a person employed in, or engaged for the purposes of, the Department;

**equivalent authority** means —

- (a) a licence or permit under the *Community Services Act 1972* section 17B before its repeal by the *Children and Community Services Act 2004*; or
- (b) a licence under the *Children and Community Services Act 2004* Part 8 before its repeal by this Act; or
- (c) a licence, permit or other authority (however described) relating to the provision of a child care service or similar service in another State or a Territory;

**family day care service** means a child care service provided at a place where —

- (a) the person providing the service lives; and
- (b) none of the children to whom the service is provided live;

**individual applicant** means an applicant who is an individual;

**interim negative notice** has the meaning given to that term in the *Working with Children (Criminal Record Checking) Act 2004* section 4;

**licence** means a licence under this Act;

**licence document** means a licence document issued under section 33;

**licensee** means a person who holds a licence;

**licensing officer** means a person appointed as a licensing officer under section 40;

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**managerial officer**, in relation to a body corporate other than a public authority, means —

- (a) a director or secretary of the body; or
- (b) if the applicant is an incorporated association as defined in the *Associations Incorporation Act 1987* section 3(1), a member of the committee of the association; or
- (c) a person who holds 50% or more of the issued shares of the body; or
- (d) any other person who, in the opinion of the CEO, exercises or exerts control or influence over the body, or is in a position to do so;

**negative notice** has the meaning given in the *Working with Children (Criminal Record Checking) Act 2004* section 4;

**nominated supervising officer** means the person nominated in an application made by a corporate applicant or a public authority as the person who will be responsible for the day-to-day supervision and control of the child care service to which the application relates;

**parent**, in relation to a child, means a person who at law has responsibility for —

- (a) the long-term care, welfare and development of the child; or
- (b) the day-to-day care, welfare and development of the child;

**place** means anywhere at all, and includes anywhere in or on something that is moving or can move;

**prescribed offence** means an offence prescribed, or of a class prescribed, in the regulations;

**public authority** means —

- (a) a department of the Public Service; or
- (b) a State agency or instrumentality; or
- (c) a local government or regional local government; or

- (d) a body, whether corporate or unincorporate, or the holder of an office, post or position, established or continued for a public purpose under a written law;

**relative** has the meaning given in the *Children and Community Services Act 2004* section 3;

**supervising officer** for a child care service means —

- (a) if a licence in respect of the service is granted to an individual —
  - (i) the licensee; or
  - (ii) a person appointed under the regulations to act in place of the licensee;

or

- (b) if a licence in respect of the service is granted to a corporate applicant or a public authority —
  - (i) the person specified in the licence document relating to the service as the person responsible for the day-to-day supervision and control of the service; or
  - (ii) a person appointed under the regulations to act in place of the person referred to in subparagraph (i);

**suspension notice** means a notice under section 25(1);

**usual occupant**, in relation to an application that relates to a family day care service, means —

- (a) a person other than the applicant who usually lives at the place where the service will be provided; or
- (b) any other person who is likely to be present at that place at the times when the service will be provided;

**wellbeing**, in relation to children, includes the care, development, health and safety of children.

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**4. Meaning of “child care service”**

- (1) For the purposes of this Act a child care service is a service for the casual, part-time or day-to-day care of a child or children under 13 years of age (or such other age as may be prescribed for the purposes of this subsection) that is provided —
- (a) for payment or reward, whether directly or indirectly through payment or reward for some other service; or
  - (b) as a benefit of employment; or
  - (c) as an ancillary service to a commercial or recreational activity.
- (2) The term “child care service” does not include —
- (a) care provided to a child by a parent, relative or carer of the child; or
  - (b) care provided to a child by a person in accordance with a parenting order under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*; or
  - (c) care provided to a child in accordance with an approval under the *Children and Community Services Act 2004* section 104(3); or
  - (d) care provided to a child —
    - (i) at the place where the child lives; or
    - (ii) substantially at that place;or
  - (e) care provided to a child enrolled at a school if —
    - (i) the child has reached 3 years of age; and
    - (ii) the care is provided in the course of the child’s participation in an educational programme under the *School Education Act 1999*;or
  - (f) care provided to a child at a hospital or similar place while the child is a patient at that hospital or place; or

- (g) care of a kind that is excluded by the regulations from the application of subsection (1).

**5. Object**

The object of this Act is to protect, and promote the best interests of, children who receive child care services.

**6. Best interests of children paramount**

A person or body with functions under this Act must, in the performance of those functions, regard the best interests of children as the paramount consideration.

**7. Guiding principles**

In the administration of this Act the following principles must be observed —

- (a) the principle that a child care service should be provided to a child in a way that —
  - (i) protects the child from harm; and
  - (ii) respects the child's dignity and privacy; and
  - (iii) safeguards and promotes the child's wellbeing; and
  - (iv) provides positive experiences for the child; and
  - (v) stimulates and develops the child's creative, emotional, intellectual, physical, recreational and social potential;
- (b) the principle that child care services should be provided in a way that —
  - (i) involves parents of the children to whom the services are provided and other members of the community; and
  - (ii) reflects best practice in the care, education and recreation of young children; and
  - (iii) reflects the diverse nature of the community.

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**8. Crown bound**

This Act binds the Crown in right of the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **Part 2 — Licensing of child care services**

### **Division 1 — Licence requirement**

#### **9. Offence to provide child care service without a licence**

A person must not provide a child care service at a place except under and in accordance with a licence authorising the provision of the service at that place.

Penalty:

- (a) for a first offence —
  - (i) a fine of \$12 000 and imprisonment for one year; and
  - (ii) a daily penalty of \$600;
- (b) for a subsequent offence —
  - (i) a fine of \$24 000 and imprisonment for 2 years; and
  - (ii) a daily penalty of \$1 200.

### **Division 2 — Application process**

#### **10. Who may apply for licence**

An application for a licence may be made to the CEO by —

- (a) an individual; or
- (b) a body corporate; or
- (c) in the case of a public authority that is not a body corporate, the chief executive officer (however described) of the public authority on behalf of the authority.

#### **11. Application for licence**

An application must be —

- (a) in writing in a form approved by the CEO; and

- (b) accompanied by any document or information that is prescribed; and
- (c) accompanied by the prescribed fee (if any).

**12. Further information relevant to application**

- (1) The CEO may ask an applicant for any additional document or information that the CEO considers is or could be relevant to making a decision on the application.
- (2) Without limiting subsection (1), for the purpose of deciding whether or not an individual applicant or a nominated supervising officer is a fit and proper person to provide or be involved in the provision of a child care service, the CEO —
  - (a) must ask the applicant or nominated supervising officer to undergo an oral or written assessment as to his or her knowledge and understanding of —
    - (i) the operation of this Act; and
    - (ii) the field of child development;and
  - (b) must ask the applicant or nominated supervising officer to provide a reference or report specified by the CEO; and
  - (c) must ask the applicant or nominated supervising officer to provide evidence that the person holds the qualifications prescribed in relation to the type of child care service to which the application relates; and
  - (d) may ask the applicant or nominated supervising officer to undergo a medical, psychiatric or psychological test or examination specified by the CEO.
- (3) If the CEO makes a request under subsection (1) or (2), the CEO does not have to consider the application, or consider it further, until the request is complied with.



- (4) Any costs incurred in complying with a request under subsection (1) or (2) are to be paid by the applicant unless the CEO determines otherwise.

### **Division 3 — Grant of licence**

#### **13. Power of CEO to grant licence**

- (1) The CEO may grant a licence to a person authorising the person to provide a specified type of child care service at a specified place.
- (2) In subsection (1) —  
*specified* means specified in the licence document.
- (3) A licence cannot be granted in respect of more than one child care service.
- (4) A licence cannot be granted to 2 or more persons.
- (5) A person may be granted 2 or more licences whether for the same type of child care service or for different types of child care service.

#### **14. General restrictions on grant of licence**

- (1) The CEO must not grant a licence if there are reasonable grounds for believing that the provision of the child care service to which the application relates would constitute an unacceptable risk to the wellbeing of children for whom the service would be provided.
- (2) The CEO must not grant a licence unless the CEO is satisfied that —
- (a) the applicant is capable of providing a child care service in accordance with the regulations and the terms and conditions of the licence; and
  - (b) the place at which the child care service is to be provided is suitable for that purpose; and

- (c) a licence or equivalent authority granted or issued to the applicant has not been cancelled in the period of 5 years before the application is made; and
- (d) the applicant is of sound financial reputation and stable financial background; and
- (e) if the application relates to the provision of a family day care service, each usual occupant is a fit and proper person to associate with children.

**15. Restrictions on grant of licence: individual applicant**

- (1) The CEO must not grant a licence to an individual applicant if the applicant has been found guilty of a prescribed offence unless the CEO is satisfied that there are exceptional reasons for doing so.
- (2) The CEO must not grant a licence to an individual applicant unless the CEO is satisfied that the applicant —
  - (a) has a current assessment notice; and
  - (b) has the ability to supervise and control on a day-to-day basis the provision of the child care service to which the application relates; and
  - (c) is otherwise a fit and proper person to provide a child care service.

**16. Restrictions on grant of licence: corporate applicant**

- (1) The CEO must not grant a licence to a corporate applicant if the nominated supervising officer or a managerial officer has been found guilty of a prescribed offence unless the CEO is satisfied that there are exceptional reasons for doing so.
- (2) The CEO must not grant a licence to a corporate applicant unless the CEO is satisfied that —
  - (a) a licence or equivalent authority granted or issued to the nominated supervising officer or a managerial officer

has not been cancelled in the period of 5 years before the application is made; and

- (b) the nominated supervising officer is not the supervising officer for another child care service that is or will be provided at a time when the child care service to which the application relates will be provided; and
- (c) the nominated supervising officer and each managerial officer have a current assessment notice; and
- (d) the nominated supervising officer has the ability to supervise and control on a day-to-day basis the provision of the child care service to which the application relates; and
- (e) the nominated supervising officer and each managerial officer are otherwise fit and proper people to be involved in the provision of a child care service.

**17. Restrictions on grant of licence: public authority**

- (1) The CEO must not grant a licence to a public authority if the nominated supervising officer has been found guilty of a prescribed offence unless the CEO is satisfied that there are exceptional reasons for doing so.
- (2) The CEO must not grant a licence to a public authority unless the CEO is satisfied that —
  - (a) a licence or equivalent authority granted or issued to the nominated supervising officer has not been cancelled in the period of 5 years before the application is made; and
  - (b) the nominated supervising officer is not the supervising officer for another child care service that is or will be provided at a time when the child care service to which the application relates will be provided; and
  - (c) the nominated supervising officer has a current assessment notice; and
  - (d) the nominated supervising officer has the ability to supervise and control on a day-to-day basis the provision

of the child care service to which the application relates;  
and

- (e) the nominated supervising officer is otherwise a fit and proper person to be involved in the provision of a child care service.

#### **Division 4 — Licence conditions**

##### **18. Condition as to supervision and control**

It is a condition of every licence that the licensee must ensure that the supervising officer for the child care service is present at the place where the service is provided at the times when the service is provided except to the extent (if any) that the regulations otherwise provide.

##### **19. Other conditions**

- (1) The CEO may grant a licence subject to any conditions that the CEO considers appropriate.
- (2) The regulations may prescribe conditions that are taken to be attached to —
  - (a) all licences; or
  - (b) all licences relating to a particular type of child care service,

unless otherwise specified in the licence.

##### **20. Contravention of conditions**

A licensee who contravenes a condition of a licence commits an offence.

Penalty: a fine of \$12 000.

**Division 5 — Duration and renewal of licence**

**21. Duration of licence**

- (1) A licence has effect for the period specified in the licence document unless —
  - (a) section 22(3) applies; or
  - (b) it is suspended under section 25; or
  - (c) it is cancelled under section 29; or
  - (d) it is surrendered in accordance with the regulations.
- (2) The period specified in the licence document must not exceed 3 years from the day on which the licence is granted or renewed.

**22. Application for renewal of licence**

- (1) A licensee may apply to the CEO for the renewal of a licence.
- (2) An application for renewal must be —
  - (a) in writing in a form approved by the CEO; and
  - (b) lodged with the CEO within the prescribed time or any further time that the CEO in a particular case allows; and
  - (c) accompanied by any document or information that is prescribed; and
  - (d) accompanied by the prescribed fee (if any).
- (3) If an application for renewal is made in accordance with this section the licence continues to have effect until the application is determined unless the licence is suspended under section 25 or cancelled under section 29.
- (4) Section 12 applies in relation to an application for renewal as if it were an application for a licence.

**23. Restrictions on renewal of licence**

The CEO must not renew a licence if —

- (a) the CEO is no longer satisfied as to any matter referred to in section 14(2), 15, 16 or 17 that was relevant to the decision to grant the licence; or
- (b) the CEO is satisfied that the licensee has persistently or frequently contravened the regulations or a term or condition of the licence; or
- (c) there are reasonable grounds for believing that the continued provision of the child care service to which the application relates would constitute an unacceptable risk to the wellbeing of the children for whom the service is provided.

**24. Renewal of licence**

If the CEO renews a licence the CEO may —

- (a) renew it subject to any existing condition; or
- (b) impose any new condition; or
- (c) change or remove any existing condition (other than the condition referred to in section 18).

**Division 6 — Suspension and cancellation of licence**

**25. Suspension of licence**

- (1) The CEO may, subject to section 26, by written notice given to the licensee, suspend a licence if there are reasonable grounds for believing that —
  - (a) the licensee has contravened a term or condition of the licence; or
  - (b) the licensee has contravened a provision of the regulations; or
  - (c) the licensee has contravened the *Working with Children (Criminal Record Checking) Act 2004* section 22; or
  - (d) if the licensee is an individual — the licensee has been issued with an interim negative notice; or

- (e) if the licensee is a body corporate other than a public authority — the supervising officer or a managerial officer has been issued with an interim negative notice; or
  - (f) if the licensee is a public authority — the supervising officer has been issued with an interim negative notice; or
  - (g) the continued provision of the child care service constitutes or would constitute an unacceptable risk to the wellbeing of the children for whom the service is provided.
- (2) The suspension notice must —
- (a) state the day, or the day and time, on or at which the suspension takes effect; and
  - (b) state the reasons for the CEO's decision to suspend the licence; and
  - (c) where appropriate, indicate what steps need to be taken to ensure that there is compliance with the relevant provision, term or condition or that there is no longer a risk as described in subsection (1)(g); and
  - (d) inform the licensee that the licensee has a right to apply under section 30 for a review of the CEO's decision to suspend the licence.

**26. Notice of proposed suspension**

- (1) If the CEO proposes to suspend a licence for the reason mentioned in section 25(1)(a) or (b), the CEO must give written notice to the licensee of the proposed suspension.
- (2) The notice must —
  - (a) state that the CEO proposes to suspend the licence; and
  - (b) state the reasons for the proposed suspension; and
  - (c) inform the licensee that the licensee is entitled to make representations to the CEO in respect of the proposed

suspension within 21 days after the day on which the licensee is given the notice.

- (3) In considering whether to suspend the licence the CEO must have regard to any representations made by the licensee within the period referred to in subsection (2)(c).

**27. Revocation of suspension**

- (1) The CEO must, by written notice given to the licensee, revoke the suspension of a licence if the CEO is satisfied that the steps specified in the suspension notice have been taken.
- (2) The CEO may, by written notice given to the licensee, revoke the suspension of a licence if it is appropriate to do so in the circumstances of the particular case.

**28. Duration of suspension**

The suspension of a licence has effect on and from the day, or the day and time, specified in the suspension notice until one of the following happens —

- (a) the suspension is revoked under section 27;
- (b) the licence is cancelled under section 29 or expires;
- (c) the licence is surrendered in accordance with the regulations.

**29. Cancellation of licence**

- (1) Grounds for the cancellation of a licence exist if —
  - (a) the licence was obtained improperly; or
  - (b) the CEO can no longer be satisfied as to a matter referred to in section 14(2), 15, 16 or 17 that was relevant to the decision to grant the licence; or
  - (c) the licensee has persistently or frequently contravened a term or condition of the licence or a provision of the regulations, whether or not the licence is or has been suspended on the grounds of that contravention; or



- (d) the licensee has contravened the *Working with Children (Criminal Record Checking) Act 2004* section 22, whether or not the licence is or has been suspended on the grounds of that contravention; or
  - (e) there are reasonable grounds for believing that —
    - (i) if the licensee is an individual — the licensee has been issued with a negative notice; or
    - (ii) if the licensee is a body corporate other than a public authority — the supervising officer or a managerial officer has been issued with a negative notice; or
    - (iii) if the licensee is a public authority — the supervising officer has been issued with a negative notice;
- or
- (f) there are reasonable grounds for believing that the continued provision of the child care service constitutes or would constitute an unacceptable risk to the wellbeing of the children for whom the service is provided, whether or not the licence has been suspended on the grounds of that risk.
- (2) If the CEO considers that grounds for the cancellation of a licence exist the CEO may refer the matter to the State Administrative Tribunal.
  - (3) The CEO must give written notice of a referral under subsection (2) to the licensee as soon as practicable after the referral is made.
  - (4) In proceedings commenced by a referral under subsection (2) the State Administrative Tribunal may, if it is satisfied that grounds for the cancellation of the licence exist, cancel the licence.

**Division 7 — Review of licensing decisions**

**30. Review by State Administrative Tribunal**

(1) In this section —

**licensing decision** means a decision of the CEO —

- (a) to refuse to grant or renew a licence; or
- (b) as to the period for which a licence is granted or renewed; or
- (c) to grant or renew a licence subject to a particular condition; or
- (d) to suspend a licence under section 25; or
- (e) to amend a licence under section 32;

**person aggrieved** means —

- (a) a person upon whose application a licensing decision is made; or
  - (b) the holder of the licence to which a licensing decision relates.
- (2) A person aggrieved by a licensing decision may apply to the State Administrative Tribunal for a review of the decision.

**Division 8 — General**

**31. Licence not transferable**

A licence is not transferable.

**32. Amendment of licence**

(1) In this section —

**amend** includes —

- (a) to impose any new condition; and
- (b) to change or remove any existing condition (other than the condition referred to in section 18).

- (2) The CEO may, by written notice given to the licensee, amend a licence.
- (3) An amendment may be made on application made by the licensee or on the CEO's own initiative.

**33. Licence document**

If the CEO grants a licence to a person the CEO must issue to the person a licence document that contains the prescribed details.

**34. Production of licence document for amendment**

If the CEO amends or renews a licence, the licensee must, if required by the CEO, produce the licence document to the CEO for amendment within the period specified by the CEO.

Penalty: a fine of \$6 000.

**35. Return of licence document if licence no longer in effect**

If a licence —

- (a) has expired and has not been renewed; or
- (b) has been suspended or cancelled; or
- (c) has been surrendered in accordance with the regulations,

the person who was the licensee must, as soon as practicable after the expiry, suspension, cancellation or surrender, return the licence document to the CEO.

Penalty: a fine of \$6 000.

**36. Advertising**

A person must not advertise, or otherwise hold out in any way, that the person provides a child care service unless —

- (a) the person holds a licence authorising the provision of the child care service; or

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**Part 2** Licensing of child care services

**Division 8** General

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- (b) the person is not required to hold a licence in respect of the child care service because of an exemption under section 45(1)(a).

Penalty: a fine of \$6 000.

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## Part 3 — Administration

### 37. Cooperation and assistance

- (1) In performing functions under this Act, the CEO must endeavour to work in cooperation with public authorities and non-government agencies.
- (2) The CEO must promote the establishment, implementation and regular review of procedures that facilitate such cooperation.
- (3) If the CEO considers that a public authority can, by taking specified action, assist in the performance of functions under this Act, the CEO may request the assistance of that authority, specifying the action that is sought.
- (4) A public authority must endeavour to comply with a request under subsection (3) if compliance is consistent with its duties and responsibilities and does not unduly prejudice the performance of its functions.
- (5) Nothing in this section is to be taken to limit the operation of section 38.

### 38. Exchange of information

- (1) In this section —
  - corresponding authority* means a person or body in another State or a Territory, or another country, who or which has functions corresponding to those of the CEO under this Act;
  - interested person* means a person or body who or which, in the opinion of the CEO, has a direct interest in the wellbeing of a child or a class or group of children;
  - relevant information* means information that, in the opinion of the CEO, is, or is likely to be, relevant to —
    - (a) the wellbeing of a child or a class or group of children;  
or
    - (b) the performance of a function under this Act.

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- (2) The CEO may disclose relevant information to a public authority, a corresponding authority or an interested person.
- (3) The CEO may request a public authority, a corresponding authority or an interested person who or which holds relevant information to disclose the information to the CEO, as the case requires.
- (4) Information may be disclosed under subsection (2), or in compliance with a request under subsection (3), despite any law of this State relating to secrecy or confidentiality.
- (5) If information is disclosed, in good faith, under subsection (2) or in compliance with a request under subsection (3) —
  - (a) no civil or criminal liability is incurred in respect of the disclosure; and
  - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
  - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.
- (6) The CEO must establish procedures for the disclosure of information under subsection (2).
- (7) The regulations may include provisions about —
  - (a) the receipt and storage of information disclosed under this section; and
  - (b) the restriction of access to such information.

**39. Delegation by CEO**

- (1) The CEO may delegate to a departmental officer or other person any power or duty of the CEO under another provision of this Act.
- (2) The delegation must be in writing signed by the CEO.

- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the CEO to perform a function through a departmental officer or agent.

**40. Licensing officers**

- (1) The CEO may appoint a departmental officer as a licensing officer for the purposes of this Act.
- (2) The CEO must ensure that each licensing officer is issued with an identity card in a form approved by the CEO.
- (3) A licensing officer must display his or her identity card whenever dealing with a person in respect of whom the officer has exercised, is exercising, or is about to exercise, a power under this Act.
- (4) In any proceedings the production by a licensing officer of his or her identity card is conclusive evidence of his or her appointment under this section.

**41. Advisory bodies**

- (1) In this section —  
*advisory body* means a body established under subsection (2).
- (2) The Minister may establish one or more bodies to provide advice or assistance to the Minister or the CEO on matters relevant to the operation or administration of this Act.
- (3) Subsection (2) does not authorise the Minister to establish a body corporate.

**s. 41**

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- (4) An advisory body is to consist of such people as the Minister thinks fit.
- (5) An advisory body is to be established by an instrument signed by the Minister that —
  - (a) identifies the members of the body and the length and conditions of each of their appointments; and
  - (b) sets out the duties and responsibilities of the body; and
  - (c) sets out any other matters in relation to the operation of the body that the Minister considers appropriate.
- (6) The Minister may, by instrument signed by the Minister, amend or cancel an instrument made under subsection (5).
- (7) The Minister must cause an instrument made under this section to be published in the *Gazette*.
- (8) Members of an advisory body are entitled to any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

*[Section 41 amended by No. 39 of 2010 s. 89.]*



## Part 4 — Enforcement

### 42. Powers of entry and inspection

- (1) A licensing officer may —
  - (a) enter at any reasonable time any place specified in a licence as a place at which a child care service may be provided and inspect that place and any equipment or other thing at that place; and
  - (b) enter and inspect any other place if authorised to do so by a warrant issued under subsection (3); and
  - (c) require any person who is at a place entered under paragraph (a) or (b) to provide any information that is necessary for the purpose of investigating compliance with this Act or the regulations; and
  - (d) inspect and for that purpose require the production of, any register, record or other document that any person is required by the regulations to keep and copy or take extracts from any such register, record or other document.
- (2) A person must not, without lawful excuse, fail to comply with a requirement under subsection (1)(c) or (d).  
Penalty: a fine of \$6 000.
- (3) If a magistrate is satisfied by evidence on oath that there are reasonable grounds to suspect that a child care service is being provided at a place other than a place at which such a service may be provided under a licence, the magistrate may issue a warrant to a licensing officer or a police officer authorising the officer to enter and inspect that place.

### 43. Legal proceedings

- (1) Proceedings for an offence under this Act or in respect of any other matter arising under this Act may be commenced in the

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name of the CEO by the CEO or a person authorised to do so by the CEO.

- (2) In any proceedings no proof is required of —
- (a) the appointment of the CEO; or
  - (b) the authorisation of a person under subsection (1),

but an averment in a prosecution notice that the person is so appointed or authorised is to be taken to be proved unless the contrary is proved.

- (3) Subsection (1) does not limit the ability of a person to commence or conduct the prosecution of an offence if the person has authority at law to do so.

**44. Evidentiary certificate**

- (1) In proceedings for an offence under this Act production of a certificate containing a statement described in subsection (2) and purporting to be signed by the CEO is, without proof of any appointment or signature, evidence of the facts stated in the certificate.
- (2) A certificate may state any or all of the following —
- (a) that a person has or had, or does not or did not have, a licence in relation to a particular child care service;
  - (b) that a licence did or did not specify a particular place;
  - (c) the conditions to which a licence is or was subject;
  - (d) the day, days or period on or during which anything referred to in any of paragraphs (a) to (c) applied.

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## Part 5 — Other matters

### 45. Exemptions

- (1) The Minister may, by order published in the *Gazette*, exempt a specified child care service or a child care service of a specified type from the application of —
  - (a) section 9; or
  - (b) the regulations; or
  - (c) a specified provision of the regulations.
- (2) In subsection (1) —  
*specified* means specified in the order.
- (3) The Minister may, by order published in the *Gazette*, amend or repeal an order made under subsection (1).
- (4) In the exercise of the powers conferred by subsections (1) and (3), the Minister must have regard to —
  - (a) the best interests of the children for whom the child care service is or is intended to be provided and any special needs or interests of those children; and
  - (b) the views of the parents of those children; and
  - (c) the needs of the locality in which the child care service is or is intended to be provided and the extent to which those needs are being met; and
  - (d) the desirability of or need for short-term, special, innovative, experimental, culturally appropriate and culturally specific child care services.

### 46. Production of child care records

- (1) In this section —  
*child care record* means a document in the records of the Department that —

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- (a) relates to a child care service (whether or not the service is an existing child care service); and
  - (b) contains information about one or more of the following people —
    - (i) a child;
    - (ii) a child's parent;
    - (iii) a child's carer.
- (2) This section applies if a party to any legal proceedings lawfully requires —
- (a) the CEO or a departmental officer to produce to the party, or the court or tribunal concerned, a child care record; or
  - (b) an officer or employee of a public authority to produce to the party, or the court or tribunal concerned, a child care record to which that public authority has been given access.
- (3) The party requiring production of the child care record must describe the record —
- (a) by reference to the child care service to which it relates; and
  - (b) by reference to the person or people to whom it relates; and
  - (c) by reference to the period to which it relates; and
  - (d) by general reference to the circumstances to which it relates.
- (4) The party requiring production of the child care record must show that the circumstances to which the record relates are relevant to the proceedings.
- (5) A person must not, directly or indirectly, record, disclose or make use of information in a child care record produced in response to a requirement referred to in subsection (2) other than for a purpose connected with the proceedings.

Penalty: a fine of \$12 000.

- (6) If a child care record is produced to a court or tribunal in response to a requirement referred to in subsection (2), the court or tribunal must take reasonable steps to ensure that access to the record is limited to one or more of the following people —
- (a) a party to the proceedings;
  - (b) a legal representative of a party to the proceedings;
  - (c) an expert witness in the proceedings;
  - (d) if the proceedings are in the Family Court —
    - (i) a family consultant as defined in the *Family Court Act 1997* section 61; or
    - (ii) any other person required or directed to prepare a report on matters relevant to the proceedings, under that Act or the *Family Law Act 1975* of the Commonwealth;
  - (e) a person who can show that the CEO has authorised his or her access to the record;
  - (f) a person considered by the court or tribunal to have a direct interest in the proceedings.
- (7) A person referred to in subsection (6) who has been given access to a child care record by a court or tribunal must not, without the approval of the court or tribunal, make a copy of, or otherwise reproduce, the record.

Penalty: a fine of \$6 000.

- (8) For the purposes of subsection (7), the court or tribunal may give approval on such conditions, including conditions about the return or destruction of copies or reproductions made, as the court or tribunal thinks fit.

#### **47. Obstruction**

A person must not obstruct or hinder a person who is performing or attempting to perform a function under this Act.

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Penalty: a fine of \$12 000 and imprisonment for one year.

**48. Impersonating a licensing officer**

A person must not falsely represent, by words or conduct, that a person is a licensing officer.

Penalty: a fine of \$12 000 and imprisonment for one year.

**49. False information**

A person must not give information orally or in writing in, or in relation to, an application or other document prepared for the purposes of this Act that the person knows to be false or misleading in a material respect.

Penalty: a fine of \$6 000.

**50. Confidentiality of information**

- (1) This section applies to a person who is or has been engaged in the performance of functions under this Act.
- (2) A person to whom this section applies must not, directly or indirectly, record, disclose or make use of information obtained in the course of duty, except —
  - (a) for the purpose of, or in connection with, performing functions under this Act; or
  - (b) for the purpose of the investigation of any suspected offence under this Act or the conduct of proceedings against any person for an offence under this Act; or
  - (c) as required or allowed under this Act or another written law; or
  - (d) with the written consent of the Minister or the person to whom the information relates; or
  - (e) in prescribed circumstances.

Penalty: a fine of \$12 000 and imprisonment for one year.

- (3) Subsection (2) is not to be taken to prevent the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (4) If information is lawfully disclosed under this section, this section does not prevent the further disclosure of the information, or the recording or use of the information, for the purpose for which the disclosure was made.

**51. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) A person who, at the request of a licensing officer, assists the officer in the exercise of a power under this Act is to be taken, for the purposes of this section, to be performing a function under this Act.
- (5) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

**52. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made for any one or more of the purposes set out in Schedule 1.

**s. 53**

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**53. Review of Act**

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after every fifth anniversary of the commencement of this section.
- (2) The Minister must prepare a report based on each review under subsection (1) and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the relevant anniversary), cause it to be laid before each House of Parliament.



## **Part 6 — Transitional provisions**

### **54. Terms used in this Part**

In this Part —

*commencement day* means the day on which section 65 comes into operation;

*Part 8 provisions* means the provisions of the *Children and Community Services Act 2004* Part 8 in force immediately before the commencement day.

### **55. Interpretation Act 1984 not affected**

This Part is additional to and does not affect the operation of the *Interpretation Act 1984* (in particular, section 36 of that Act) in relation to the repeal and re-enactment of the Part 8 provisions by this Act.

### **56. Continuation of certain regulations**

(1) In this section —

*child care regulations* means the following regulations as in force immediately before the commencement day —

- (a) the *Children and Community Services (Child Care) Regulations 2006*;
- (b) the *Children and Community Services (Family Day Care) Regulations 2006*;
- (c) the *Children and Community Services (Outside School Hours Care) Regulations 2006*;
- (d) the *Children and Community Services (Outside School Hours Family Day Care) Regulations 2006*.

(2) The child care regulations have effect on and after the commencement day, with all necessary changes, as if they were regulations made under section 52 and may be amended or repealed accordingly.

**s. 57**

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**57. Exemptions**

An order under the *Children and Community Services Act 2004* section 229(1) that is in force immediately before the commencement day has effect on and after that day, with all necessary changes, as if it were an order made under section 45(1) and may be amended or repealed accordingly.

**58. Applications for licence or renewal of licence**

An application for a licence or the renewal of a licence made under the Part 8 provisions that has not been finally determined immediately before the commencement day is to be dealt with and determined as if it were an application for a licence or the renewal of a licence under this Act.

**59. Licences**

- (1) A licence under the Part 8 provisions that is in force immediately before the commencement day is to be regarded on and after that day as a licence under this Act and may be dealt with accordingly.
- (2) The reference in subsection (1) to a licence under the Part 8 provisions includes a reference to a licence or permit that has effect as if it were a licence under the Part 8 provisions because of the *Children and Community Services Act 2004* Schedule 1 clause 18(1).

**60. References to Part 8 provisions**

If in a written law or other document or instrument there is a reference to a Part 8 provision, the reference is, unless the context otherwise requires, to be read on and after the commencement day as a reference to the provision of this Act that corresponds to the Part 8 provision.

**61. Transitional regulations**

- (1) If there is no sufficient provision in this Part for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (2) In subsection (1) —  
*transitional matter* means a matter that needs to be dealt with for the transition from the Part 8 provisions to the provisions of this Act.
- (3) Regulations under subsection (1) may provide that specified provisions of a written law do not apply, or apply with specified modifications, to or in relation to any matter.
- (4) If regulations under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subsections (3) and (4) —  
*specified* means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not —
  - (a) affect, in a manner prejudicial to any person (other than the State, an authority of the State or a local government), rights that the person had before the regulations were published in the *Gazette*; or
  - (b) impose liabilities on any person (other than the State, an authority of the State or a local government) in respect of anything done or omitted to be done before the regulations were published in the *Gazette*.

## **Part 7 — Other Acts amended**

### **Division 1 — *Children and Community Services Act 2004***

**62. The Act amended in this Division**

The amendments in this Division are to the *Children and Community Services Act 2004*.

**63. Long title amended**

The long title is amended by deleting “, the employment of children, and child care services;” and inserting instead —

“ **and the employment of children;** ”.

**64. Section 6 amended**

Section 6 is amended as follows:

- (a) after paragraph (e) by deleting “; and” and inserting a full stop instead;
- (b) by deleting paragraph (f);
- (c) after each of paragraphs (a) to (d) by inserting —  
“ and ”.

**65. Part 8 repealed**

Part 8 is repealed.

**Division 2 — Constitution Acts Amendment Act 1899**

**66. The Act amended in this Division**

The amendment in this Division is to the *Constitution Acts Amendment Act 1899*.

**67. Schedule V amended**

Schedule V Part 3 is amended after the item relating to any advisory body established or continued under the *Children and Community Services Act 2004* by inserting —

“

Any advisory body established under the *Child Care Services Act 2007*.

”.

**Division 3 — Evidence Act 1906**

**68. The Act amended in this Division**

The amendments in this Division are to the *Evidence Act 1906*.

**69. Section 19L amended**

- (1) Section 19L(3) is repealed and the following subsection is inserted instead —

“

- (3) Subject to subsections (4) and (4a), sections 238 and 239 of the *Children and Community Services Act 2004* and section 46 of the *Child Care Services Act 2007* do not apply to the production or disclosure of a protected communication in criminal proceedings.

”.

- (2) After section 19L(4) the following subsection is inserted —

“

- (4a) If in criminal proceedings leave is given under the protection provisions to require disclosure of a child

care record as defined in subsection (1) of section 46 of the *Child Care Services Act 2007*, subsections (5) to (8) of that section apply as if the child care record had been produced in response to a requirement referred to in subsection (2) of that section.

”.

**Division 4 — *Working with Children (Criminal Record Checking) Act 2004***

**70. The Act amended in this Division**

The amendments in this Division are to the *Working with Children (Criminal Record Checking) Act 2004*.

**71. Section 4 amended**

Section 4 is amended by deleting the definition of “child care service” and inserting instead —

“

*child care service* has the meaning given in the *Child Care Services Act 2007* section 3;

”.

**72. Section 5 amended**

- (1) Section 5(1) is amended in the definition of “managerial officer” by deleting “*Children and Community Services Act 2004* section 197.” and inserting instead —

“ *Child Care Services Act 2007* section 3. ”.

- (2) Section 5(2) is amended by deleting “*Children and Community Services Act 2004* Part 8” and inserting instead —

“ *Child Care Services Act 2007* ”.

**73. Section 38 amended**

- (1) Section 38(1) is amended in the definition of “Department” by deleting “*Children and Community Services Act 2004*,” and inserting instead —

“ *Child Care Services Act 2007*; ”.

- (2) Section 38(3) is amended as follows:

- (a) in paragraph (a) by deleting “*Children and Community Services Act 2004 Part 8*,” and inserting instead —

“ *Child Care Services Act 2007*; ”;

- (b) in paragraph (b) by deleting “197” and inserting instead —

“ 3 ”.

**Schedule 1 — Purposes for which regulations may be made**

[s. 52(2)]

1. Prescribing types of child care service and making different provisions for or in respect of each of those types.
2. Regulating applications for licences, objections to the grant of licences, the amendment of licences and the surrender of licences.
3. Conferring power on the CEO to conduct any check (including a criminal record check) that the CEO considers appropriate as to the character and background of a person for the purpose of determining whether the person is a fit and proper person to provide or be involved in the provision of a child care service or to associate with children, as the case requires.
4. Prescribing matters to which the CEO must have regard in determining whether a particular person is a fit and proper person to provide or be involved in the provision of a child care service or to associate with children, as the case requires.
5. Prescribing the documents (including criminal record checks) and information to be provided by an applicant or licensee in connection with an application or the provision of a child care service, as the case requires.
6. Requiring a licensee to notify the CEO of changes in circumstances relating to or affecting the provision of a child care service including, without limitation, a change of supervising officer or managerial officer.
7. Providing for and in relation to the appointment of supervising officers and persons to act in their place.
8. Providing for the powers and duties of licensing officers.
9. Regulating the staffing requirements for the provision of child care services.
10. Conferring power on the CEO to obtain a criminal record check in relation to any member of the staff of a child care service.
11. Prescribing requirements as to the health and safety of children during the provision of child care services.



12. Requiring a licensee or a member of the staff of a child care service from time to time to undergo medical examinations or to provide any document (including a criminal record check) or information relevant to the health and safety of children during the provision of the child care service.
13. Regulating the building and other physical environment requirements for the provision of child care services.
14. Regulating programmes of activities and equipment to be provided in child care services.
15. Regulating the administration of child care services, the records to be maintained and the returns to be made.
16. Providing for the continued operation of a child care service in an emergency situation or in circumstances where the licence relating to the service is suspended or cancelled.
17. Conferring power on the CEO in special circumstances in particular cases to grant exemptions from provisions of the regulations for periods specified in the exemptions and to impose conditions subject to which an exemption applies.
18. Conferring power on, or requiring, the CEO to notify the parents of children for whom a child care service is provided of any prescribed matter relating to or affecting the provision of the service.
19. Prescribing fees payable —
  - (a) in respect of applications for the grant or renewal of licences, including fees by way of penalty for late lodgment of applications; and
  - (b) for the grant or renewal of licences.
20. Requiring any document or information provided by an applicant or a licensee to be verified by statutory declaration.
21. Establishing a mechanism for the review of the regulations.
22. Providing for offences against the regulations and prescribing, in respect of any such offence, a penalty not exceeding a fine of \$6 000.

**Notes**

<sup>1</sup> This is a compilation of the *Child Care Services Act 2007* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Child Care Services Act 2007</i>	19 of 2007	3 Jul 2007	s. 1 and 2: 3 Jul 2007 (see s. 2(a)); Act other than s. 1 and 2: 10 Aug 2007 (see s. 2(b) and <i>Gazette</i> 9 Aug 2007 p. 4071)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)

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