



Western Australia

## **Child Care Services Act 2007**

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## Child Care Services Act 2007

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**Defined terms**





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<sup>2</sup>, 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<sup>1</sup>.

### **3. Terms used**

In this Act, unless the contrary intention appears —

***amendment application*** means an application under section 32 for the amendment of a licence;

***approved*** means approved by the CEO;

***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;

***compliance notice*** means a compliance notice given under section 43M;

***compliance purposes*** means the purposes of performing one or more of the functions mentioned in section 41A;

***corporate applicant*** means a licence applicant that is a body corporate but is not a public authority;

**corporate licensee** means a licensee that is a body corporate but is not a public authority;

**criminal record check** means a document issued by the Police Force of Western Australia, the Australian Federal Police or another body or agency approved by the CEO that sets out, or summarises in a manner acceptable to the CEO, 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;

**entry warrant** means an entry warrant issued under Part 4 Division 2;

**family day care service** means a type of child care service prescribed as a family day care service for the purposes of this Act;

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

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

**licence applicant** means —

- (a) in the case of a licence application made on behalf of a public authority — the public authority; and
- (b) in the case of any other licence application — the person who makes the application;

**licence application** means an application under section 10;

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

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

**licensing officer** means a person designated as a licensing officer under section 40(1);

**managerial officer**, in relation to a body corporate, means —

- (a) if the body corporate is an incorporated association as defined in the *Associations Incorporation Act 1987* section 3(1), a member of the association who —
- (i) holds a prescribed office of the association; or
  - (ii) has a function of a prescribed class relating to the provision of a child care service by the association;

or

- (b) in any other case, an individual who is an officer, as defined in the *Corporations Act 2001* (Commonwealth) section 9, of the body corporate;

***national child care law*** means the *Education and Care Services National Law (Western Australia)*;

***occupier***, of a place, includes any person who appears to have the control or management of the place;

***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*** means prescribed by regulations made under section 52;

***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;

**record** means any record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

- (a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and
- (b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

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

**relevant record** means a record or document that —

- (a) is required to be kept under this Act; or
- (b) contains information that is or may be relevant to a contravention of this Act;

**renewal applicant** means a person who makes a renewal application;

**renewal application** means an application under section 22 for the renewal of a licence;

**supervising officer** has the meaning given in section 5A;

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

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

- (a) a person other than the licence 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.

[Section 3 amended by No. 38 of 2011 s. 4; No. 11 of 2012 s. 21.]

**s. 4**

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**4. Term used: child care service**

For the purposes of this Act, a *child care service* is a service providing or intended to provide education and care on a regular basis to children under 13 years of age (or such other age as may be prescribed for the purposes of this section) that —

- (a) is not an education and care service under the national child care law; and
- (b) is prescribed for the purposes of this Act as a type of service to which this Act applies.

*[Section 4 inserted by No. 11 of 2012 s. 22.]*

**5A. Term used: supervising officer**

- (1) For the purposes of this Act, the *supervising officer* for a child care service at a particular time is —
  - (a) if the licensee for the service is an individual —
    - (i) the licensee; or
    - (ii) another individual who is approved by the CEO, in accordance with the regulations, to act in place of the licensee at that time;
  - or
  - (b) if the licensee for the service is a body corporate or public authority, an individual who is —
    - (i) approved by the CEO, in accordance with the regulations, as a person suitable to have responsibility for the day-to-day supervision and control of the service; and
    - (ii) nominated by the licensee, in accordance with the regulations, as the supervising officer for the service at that time.
- (2) Regulations made for the purposes of subsection (1)(b)(ii) must not allow a licensee for a child care service to nominate 2 or more individuals as the supervising officer for the service at the same time.

*[Section 5A inserted by No. 38 of 2011 s. 5.]*

**5B. Application of this Act to associated children's services**

- (1) This Act does not apply to a child care service that is an associated children's service to the extent to which the national child care law applies to that service.
- (2) Subject to subsection (1), this Act applies in relation to an associated children's service provided at a place as if —
  - (a) a service approval in relation to the associated children's service, were a licence under this Act authorising the provision of the child care service at that place; and
  - (b) an approved provider who is the holder of a service approval in relation to the associated children's service, were a holder of a licence under this Act authorising the provision of the child care service at that place; and
  - (c) a person with management or control in relation to the associated children's service, the approved provider for which is a body corporate, were a managerial officer of the body corporate; and
  - (d) a nominated supervisor in relation to the associated children's service, were a supervising officer for the child care service.
- (3) Instead of amending a service approval, under section 32 as read with subsection (2), in relation to an associated children's service, the CEO is to direct the Regulatory Authority to amend the service approval under section 55(5) of the national child care law.
- (4) If a term is given a meaning in the national child care law, it has the same meaning in this section.

*[Section 5B inserted by No. 11 of 2012 s. 23.]*

**5. Object of Act**

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

**6. Paramount consideration when performing functions under Act**

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. Principles to be observed when administering Act**

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.



**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. Providing child care service without licence, offence**

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 — Licence application process**

*[Heading amended by No. 38 of 2011 s. 6.]*

#### **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**

A licence application must be —

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

*[Section 11 amended by No. 38 of 2011 s. 7.]*

**12. CEO may request more information to decide licence application**

- (1) The CEO may ask a licence applicant for any additional document or information that the CEO considers is or could be relevant to making a decision on the licence application.
- (2) Without limiting subsection (1), for the purpose of deciding whether or not an individual applicant is a fit and proper person to provide the child care service to which the licence application relates, the CEO may ask the applicant to do one or more of the following —
  - (a) 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;
  - (b) provide a reference or report specified by the CEO;
  - (c) provide evidence that the applicant holds qualifications prescribed in relation to the type of child care service to which the licence application relates;
  - (d) 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 licence 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 licence applicant unless the CEO determines otherwise.

*[Section 12 amended by No. 38 of 2011 s. 8.]*

### **Division 3 — Grant of licence**

#### **13. Licence, grant of**

- (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 licence 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 if the licence applicant is disqualified under section 29(4)(e)(i) or 30C(4)(d)(i) from holding a licence.

- (3) The CEO must not grant a licence unless the CEO is satisfied that —
- (a) the licence applicant is capable of providing the child care service to which the licence application relates (the **relevant service**) in accordance with this Act and any proposed conditions of the licence; and
  - (b) without limiting paragraph (a), the licence applicant has sufficient material and financial resources to provide the relevant service in accordance with this Act and any proposed conditions of the licence; and
  - (c) the place at which the relevant service is to be provided is suitable for that purpose.

*[Section 14 amended by No. 38 of 2011 s. 9.]*

**15. Additional restrictions on grant of licence to individual applicant**

- (1) The CEO must not grant a licence to an individual applicant if the applicant is disqualified —
- (a) under section 29(4)(e)(ii) or 30C(4)(d)(ii) from being a managerial officer of a corporate licensee; or
  - (b) under section 29(4)(e)(iii) or 30C(4)(d)(iii) from being the supervising officer for a child care service.
- (2) The CEO must not grant a licence to an individual applicant unless the CEO is satisfied that —
- (a) the applicant has the ability to supervise and control on a day-to-day basis the provision of the child care service to which the licence application relates (the **relevant service**); and
  - (b) is otherwise a fit and proper person to provide the relevant service; and
  - (c) if the relevant service is a family day care service — each usual occupant is a fit and proper person to associate with children.

*[Section 15 inserted by No. 38 of 2011 s. 10.]*

**16. Additional restrictions on grant of licence to corporate applicant**

- (1) The CEO must not grant a licence to a corporate applicant if a managerial officer of the applicant is disqualified under section 29(4)(e)(ii) or 30C(4)(d)(ii) from being a managerial officer of a corporate licensee.
- (2) The CEO must not grant a licence to a corporate applicant unless the CEO is satisfied that each managerial officer of the applicant is a fit and proper person to be involved in the provision of the child care service to which the licence application relates.

*[Section 16 inserted by No. 38 of 2011 s. 10.]*

*[17. Deleted by No. 38 of 2011 s. 10.]*

**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. Conditions that may be imposed**

- (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, offence**

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 29; or
  - (c) it is cancelled under section 29 or 30B; or
  - (d) it is surrendered in accordance with the regulations.
- (2) Unless it is extended under subsection (3), the period specified in the licence document must not exceed 3 years from the day on which the licence is granted or renewed.
- (3) If an application for another licence is made in respect of the place to which a licence document applies, the CEO may extend the period specified in the licence document so that the existing licence continues to have effect until the application is determined.

*[Section 21 amended by No. 38 of 2011 s. 11.]*

**22. Renewal of licence, application for**

- (1) A licensee may apply to the CEO for the renewal of a licence.
- (2) A renewal application must be —
  - (a) in the approved form; 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 a renewal application is made in accordance with subsection (2) the licence continues to have effect until the renewal application is determined unless the licence is suspended under section 25 or 29 or cancelled under section 29 or 30B.

*[Section 22 amended by No. 38 of 2011 s. 12.]*

**23A. CEO may request more information to decide renewal application**

- (1) The CEO may ask a renewal applicant for any additional document or information that the CEO considers is or could be relevant to making a decision on the renewal application.
- (2) Without limiting subsection (1), for the purpose of deciding whether or not an individual making a renewal application continues to be a fit and proper person to provide the child care service to which the renewal application relates, the CEO may ask the renewal applicant to do anything mentioned in section 12(2)(a), (b), (c) or (d).
- (3) If the CEO makes a request under subsection (1) or (2), the CEO does not have to consider the renewal 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 renewal applicant unless the CEO determines otherwise.

*[Section 23A inserted by No. 38 of 2011 s. 13.]*

**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(3), 15(2) or 16(2) that was relevant to the decision to grant the licence; or



- (b) the CEO is satisfied that the licensee has persistently or frequently contravened this Act; or
- (c) there are reasonable grounds for believing that the continued provision of the child care service to which the renewal application relates would constitute an unacceptable risk to the wellbeing of the children for whom the service is provided.

*[Section 23 amended by No. 38 of 2011 s. 14.]*

**24. Conditions of renewed 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 — Disciplinary matters**

*[Heading inserted by No. 38 of 2011 s. 15.]*

**25. Suspending licence on ground of unacceptable risk**

- (1) The CEO may, by written notice given to the licensee, suspend a licence if the CEO considers that there are reasonable grounds for believing that the continued provision of the child care service to which the licence relates would constitute an unacceptable risk to the wellbeing of the children for whom the service is provided.
- (2) The CEO may suspend a licence under subsection (1) whether or not the CEO has given the licensee an opportunity to make representations in relation to the proposed suspension.
- (3) The suspension notice —
  - (a) must specify the day on which the suspension takes effect; and

- (b) must specify the period of the suspension, which must not exceed 60 days; and
  - (c) must specify the reasons for the CEO's decision to suspend the licence; and
  - (d) must explain the effect of subsection (4); and
  - (e) may specify measures to be taken by the licensee to remove the risk described in subsection (1).
- (4) Within 21 days after giving a suspension notice, the CEO must, unless the suspension has been revoked under section 27, make an allegation to the State Administrative Tribunal in relation to the matter giving rise to the suspension.
- (5) Section 29(4) applies in relation to proceedings commenced by an allegation under subsection (4) as if they were proceedings commenced by an allegation under section 29(3).
- (6) In proceedings commenced by an allegation under subsection (4), the State Administrative Tribunal may, in addition to any other order it has power to make, make an order confirming, revoking, or extending the period of, the suspension.

*[Section 25 inserted by No. 38 of 2011 s. 16.]*

*[26. Deleted by No. 38 of 2011 s. 17.]*

**27. Revoking suspension made under s. 25**

- (1) Unless subsection (2) applies, the CEO may, by written notice given to the licensee, revoke the suspension of a licence under section 25 if the CEO —
- (a) is satisfied that measures specified in the suspension notice under section 25(3)(e) have been taken; or
  - (b) is otherwise satisfied that it is appropriate to do so in the circumstances of the particular case.

- (2) The CEO cannot take action under subsection (1) if the CEO has made an allegation under section 25(4) in relation to the matter giving rise to the suspension.

*[Section 27 inserted by No. 38 of 2011 s. 18.]*

**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 by the CEO under section 27;
- (ba) the suspension is revoked by the State Administrative Tribunal under section 25(6) or on an application under section 30 for a review of the CEO's decision to suspend the licence;
- (b) the licence is cancelled under section 29 or 30B or expires;
- (c) the licence is surrendered in accordance with the regulations.

*[Section 28 amended by No. 38 of 2011 s. 19.]*

**29. Disciplinary action by SAT against licensee**

- (1) In this section —  
*specified* means specified in an order under subsection (4).
- (2) Grounds for disciplinary action against a licensee exist if —
- (a) the licensee has improperly obtained a licence; or
  - (b) the licensee has contravened this Act; or
  - (c) the CEO is no longer satisfied as to a matter referred to in section 14(3), 15(2) or 16(2) that was relevant to the decision to grant a licence to the licensee; or
  - (d) the licensee has contravened the *Working with Children (Criminal Record Checking) Act 2004* section 22; or

- (e) there are reasonable grounds for believing that the continued provision of the child care service to which a licence held by the licensee relates would constitute an unacceptable risk to the wellbeing of the children for whom the service is provided.
- (3) If the CEO considers that grounds for disciplinary action against a licensee exist, the CEO may make an allegation to the State Administrative Tribunal in respect of that person.
- (4) In proceedings commenced by an allegation under subsection (3) in respect of a person, the State Administrative Tribunal, if satisfied that grounds for disciplinary action exist, may make one or more of the following orders —
- (a) an order reprimanding the person;
  - (b) an order that the person —
    - (i) undertake a specified educational or training course; or
    - (ii) refund to a specified person or body fees or other money received from that person or body in connection with the provision of the child care service to which the licence relates; or
    - (iii) comply with any other specified requirement;
  - (c) an order imposing a condition on, or amending a condition of, a licence held by the person;
  - (d) subject to section 30A, an order requiring the person to pay a penalty not exceeding \$25 000;
  - (e) an order disqualifying the person from one or more of the following —
    - (i) holding a licence;
    - (ii) being a managerial officer of a corporate licensee;
    - (iii) being the supervising officer for a child care service,  
permanently, for a specified period or until a further order is made by the Tribunal;

- (f) an order suspending a licence held by the person for a specified period or until a further order is made by the Tribunal;
  - (g) an order cancelling a licence held by the person.
- (5) The State Administrative Tribunal may make an order under subsection (4)(a), (b)(ii) or (iii), (d) or (e) in respect of a person whether or not at the time when the order is made the person is a licensee.

*[Section 29 inserted by No. 38 of 2011 s. 20.]*

**30A. Limitations on penalties imposed under s. 29(4)(d) or by courts for offences**

- (1) The power described in section 29(4)(d) and the power of a court to impose a penalty for an offence under this Act must not both be exercised in respect of an act or omission of a person that is substantially the same.
- (2) A penalty that exceeds the relevant maximum fine cannot be imposed under section 29(4)(d).
- (3) In subsection (2) —  
***relevant maximum fine*** means, if the penalty is to be imposed in respect of an act or omission that constitutes an offence under this Act, the maximum fine that could be imposed by a court for that offence.

*[Section 30A inserted by No. 38 of 2011 s. 20.]*

**30B. Cancelling licence if child care service no longer provided**

The State Administrative Tribunal may, on the application of the CEO, make an order cancelling a licence if the Tribunal is satisfied that the licensee has ceased to provide the child care service to which the licence relates.

*[Section 30B inserted by No. 38 of 2011 s. 20.]*

**30C. Disciplinary action by SAT against managerial officer**

- (1) In this section —  
*specified* means specified in an order under subsection (4).
- (2) Grounds for disciplinary action against a managerial officer of a corporate licensee exist if —
  - (a) the licensee has contravened this Act and —
    - (i) the contravention occurred with the managerial officer's knowledge or permission; or
    - (ii) the managerial officer failed to use all due diligence to prevent the contravention;
  - or
  - (b) the managerial officer is not a fit and proper person to be involved in the provision of a child care service.
- (3) If the CEO considers that grounds for disciplinary action against a managerial officer of a corporate licensee exist, the CEO may make an allegation to the State Administrative Tribunal in respect of that person.
- (4) In proceedings commenced by an allegation under subsection (3) in respect of a person, the State Administrative Tribunal, if satisfied that grounds for disciplinary action exist, may make one or more of the following orders —
  - (a) an order reprimanding the person;
  - (b) an order requiring the person —
    - (i) to undertake a specified educational or training course; or
    - (ii) to comply with any other specified requirement;
  - (c) subject to subsection (5), an order requiring the person to pay a penalty not exceeding \$2 500;
  - (d) an order disqualifying the person from one or more of the following —
    - (i) holding a licence;

- (ii) being a managerial officer of a corporate licensee;
  - (iii) being the supervising officer for a child care service,  
permanently, for a specified period or until a further order is made by the Tribunal.
- (5) The State Administrative Tribunal is not to make an order under subsection (4)(c) unless the Tribunal is satisfied that grounds for disciplinary action exist under subsection (2)(a).
- (6) The State Administrative Tribunal may make an order under subsection (4)(a), (b)(ii), (c) or (d) in respect of a person whether or not at the time when the order is made the person is a managerial officer of a corporate licensee.

*[Section 30C inserted by No. 38 of 2011 s. 20.]*

**30D. Disqualified managerial officer not to be employed**

A corporate licensee must not employ or engage a person as a managerial officer of the licensee if the person is disqualified under section 29(4)(e)(ii) or 30C(4)(d)(ii).

Penalty: a fine of \$60 000.

*[Section 30D inserted by No. 38 of 2011 s. 20.]*

**Division 7 — Review of licensing decisions**

**30. Applying for review by SAT**

- (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 or refuse 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.

*[Section 30 amended by No. 38 of 2011 s. 21.]*

### **Division 8 — General**

**31. Licence not transferable**

A licence is not transferable.

**32. Amending 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.
- (4) An amendment application must be —
- (a) in the approved form; and
  - (b) accompanied by the prescribed fee (if any).
- (5) The CEO may ask a licensee making an amendment application for any additional document or information that the CEO



considers is or could be relevant to making a decision on the amendment application.

- (6) If the CEO makes a request under subsection (5), the CEO does not have to consider the amendment application, or consider it further, until the request is complied with.
- (7) Any costs incurred in complying with a request under subsection (5) are to be paid by the licensee making the amendment application unless the CEO determines otherwise.

*[Section 32 amended by No. 38 of 2011 s. 22.]*

**33. Licence document, issue of**

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. Licence document to be produced to CEO on request if licence amended or renewed**

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. Licence document to be returned to CEO 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 child care service, restrictions on**

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
- (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 between CEO and others

- (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 between CEO and others

- (1) In this section —

***Commonwealth agency*** means —

- (a) a department of the Public Service of the Commonwealth; or
- (b) a Commonwealth agency or instrumentality; or
- (c) a body, whether corporate or unincorporate, or the holder of an office, post or position, established or continued for a public purpose under a law of the Commonwealth;

***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 or the national child care law;

**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 or the national child care law.
- (2) The CEO may disclose relevant information to a public authority, a Commonwealth agency, a corresponding authority or an interested person.
- (3) The CEO may request a public authority, a Commonwealth agency, 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 written law 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.

- (6A) Subsection (5) does not apply to the disclosure of information by a Commonwealth agency or a corresponding authority in compliance with a request under subsection (3).
- (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.

*[Section 38 amended by No. 38 of 2011 s. 23; No. 11 of 2012 s. 24.]*

**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, designation of etc.**

- (1) The CEO may designate 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 the approved form.

**s. 41A**

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- (3) A licensing officer must —
  - (a) carry his or her identity card when performing functions under this Act; and
  - (b) if it is practicable to do so, produce his or her identity card before exercising 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 designation under this section.

*[Section 40 amended by No. 38 of 2011 s. 24.]*

**41A. Licensing officers, functions of**

The functions of a licensing officer are as follows —

- (a) to monitor compliance with this Act;
- (b) to monitor compliance with the conditions of licences and exemptions under this Act;
- (c) to monitor compliance with the *Working with Children (Criminal Record Checking) Act 2004* by licensees, managerial officers, supervising officers and members of staff in relation to the provision of child care services;
- (d) to investigate suspected contraventions of this Act;
- (e) to investigate whether grounds for disciplinary action exist for the purposes of Part 2 Division 6;
- (f) any other functions that are prescribed.

*[Section 41A inserted by No. 38 of 2011 s. 25.]*

**41. Advisory bodies, establishment of by Minister etc.**

- (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.
- (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 — Compliance and enforcement**

*[Heading inserted by No. 38 of 2011 s. 26.]*

### **Division 1 — General powers**

*[Heading inserted by No. 38 of 2011 s. 26.]*

#### **42. Entry to places**

(1) In this section —

*exempt service* means a child care service to which an order under section 45(1) applies.

(2) A licensing officer, for compliance purposes, may enter a place if —

- (a) it is a place at which a child care service is provided under a licence and the entry occurs during the service's usual hours of operation; or
- (b) it is a place at which an exempt service is provided and the entry occurs during the service's usual hours of operation; or
- (c) it is a place at which children attending a child care service are present for the purposes of an excursion; or
- (d) its occupier gives informed consent to the entry; or
- (e) the entry is authorised by an entry warrant.

(3) For the purposes of subsection (2)(d), an occupier gives informed consent if the occupier gives consent after being informed by the licensing officer —

- (a) of the powers the officer wants to exercise in respect of the place; and
- (b) of the reasons why the officer wants to exercise those powers; and
- (c) that the occupier can refuse to consent to the officer entering the place.

*[Section 42 inserted by No. 38 of 2011 s. 26.]*



**43A. Powers after entering place**

A licensing officer who enters a place under section 42(2) may do any of the following —

- (a) inspect the place and any thing at the place;
- (b) search the place and any thing at the place;
- (c) measure, test, photograph or film any part of the place or any thing at the place;
- (d) take any thing, or a sample of or from any thing, at the place for analysis or testing;
- (e) operate equipment or facilities at the place or direct a person at the place to do so;
- (f) make a copy of, or take an extract from, any record or document at the place;
- (g) seize any thing that is or may afford evidence of a contravention of this Act;
- (h) direct the occupier of the place, or a person at the place, to give the officer such assistance as the officer reasonably requires for compliance purposes.

*[Section 43A inserted by No. 38 of 2011 s. 26.]*

**43B. Information, records etc., powers to obtain**

- (1) A licensing officer, for compliance purposes, may do any of the following —
  - (a) direct a person —
    - (i) to give such information as is required; or
    - (ii) to answer a question put to the person, in relation to any matter;
  - (b) direct a person to produce a record or document that is in the person's possession or under the person's control;
  - (c) make a copy of a record or document produced in response to a direction under paragraph (b).

- (2) A direction under subsection (1)(a) —
- (a) must specify the time at or within which the information or answer is to be given; and
  - (b) may require that the information or answer —
    - (i) be given orally or in writing; and
    - (ii) be given at, or sent or delivered to, a place specified in the direction; and
    - (iii) in the case of written information or a written answer, be sent or delivered by any means specified in the direction; and
    - (iv) be given on oath or affirmation or verified by statutory declaration.
- (3) A direction under subsection (1)(b) —
- (a) must specify the time at or within which the record or document is to be produced; and
  - (b) may require that the record or document be produced —
    - (i) at any place specified in the direction; and
    - (ii) by any means specified in the direction.
- (4) If under subsection (1)(a) or (b) a licensing officer gives an oral direction to a person to give information or an answer, or to produce a record or document, the officer must inform the person that the person is required, under this Act, to give the information or answer, or produce the record or document, as the case may be.
- (5) If under subsection (1)(a) or (b) a licensing officer gives a written direction to a person to give information or an answer, or to produce a record or document, the direction must state that the person is required, under this Act, to give the information or answer, or produce the record or document, as the case may be.
- (6) A licensing officer may administer an oath or affirmation for the purposes of subsection (2)(b)(iv) and for that purpose has the authority of a commissioner for declarations.

*[Section 43B inserted by No. 38 of 2011 s. 26.]*

**43C. Relevant records, powers in relation to**

A licensing officer, for compliance purposes, may do any of the following —

- (a) operate a computer or other thing on which the officer suspects on reasonable grounds a relevant record is or may be stored or direct a person who has the custody or control of the computer or thing to do so;
- (b) direct a person who is or appears to be in control of a record or document that the officer suspects on reasonable grounds is a relevant record to give the officer a translation, code, password or other information necessary to gain access to or interpret and understand the record or document;
- (c) make a copy of or take an extract from, or download or print out, or photograph or film, a record or document that the officer suspects on reasonable grounds is a relevant record;
- (d) seize a record or document that the officer suspects on reasonable grounds is a relevant record and retain it for as long as is necessary for the purposes of this Act;
- (e) seize a computer or other thing on which the officer suspects on reasonable grounds a relevant record is or may be stored and retain it for as long as is necessary for the purposes of this Act;
- (f) take reasonable measures to secure or protect a relevant record, or computer or other thing on which a relevant record is or may be stored, against damage or unauthorised removal or interference.

*[Section 43C inserted by No. 38 of 2011 s. 26.]*

**43D. Direction under this Division, giving and contravening**

- (1) A direction under this Division may be given orally or in writing.

- (2) A person who, without reasonable excuse, fails to comply with a direction given to the person under this Division commits an offence.

Penalty: a fine of \$12 000.

*[Section 43D inserted by No. 38 of 2011 s. 26.]*

**43E. Exercise of power may be filmed etc.**

A licensing officer may record the exercise of a power under this Division, including by making an audiovisual recording.

*[Section 43E inserted by No. 38 of 2011 s. 26.]*

**43F. Assistance and use of force to exercise power**

- (1) This section applies in relation to the exercise of a power under this Division.
- (2) A licensing officer exercising the power may authorise as many other people to assist in exercising the power as are reasonably necessary in the circumstances.
- (3) In exercising the power a licensing officer, and any person authorised under subsection (2) to assist a licensing officer, may use any force that is reasonably necessary in the circumstances.
- (4) A person authorised under subsection (2) who assists a licensing officer in the exercise of the power is to be taken, for the purposes of this Act, to be performing a function under this Act.

*[Section 43F inserted by No. 38 of 2011 s. 26.]*

**43G. Seizing things, procedure on**

- (1) If a licensing officer seizes any thing under this Division, the officer must give the person who was in possession of it a receipt for it in the approved form.
- (2) If a licensing officer seizes any thing under this Division, the officer must if practicable allow a person who is otherwise entitled to possession of it to have reasonable access to it.

- (3) A licensing officer who seizes any thing under this Division may take reasonable measures to prevent the thing being concealed, lost, damaged or destroyed.
- (4) If it is not practicable to move any thing that has been seized, a licensing officer may do whatever is reasonably necessary to secure it where it is situated and to notify people that it is under seizure.
- (5) A person must not, without a licensing officer's approval, interfere or deal with any thing that the person knows, or ought reasonably to know, has been seized by a licensing officer.  
Penalty: a fine of \$12 000.

*[Section 43G inserted by No. 38 of 2011 s. 26.]*

**43H. Criminal and Found Property Disposal Act 2006, application of**

- (1) The *Criminal and Found Property Disposal Act 2006* applies to and in respect of any thing that is seized under this Division.
- (2) For the purposes of the *Criminal and Found Property Disposal Act 2006* the Department is a prescribed agency.

*[Section 43H inserted by No. 38 of 2011 s. 26.]*

**Division 2 — Entry warrants**

*[Heading inserted by No. 38 of 2011 s. 26.]*

**43I. Entry warrant, who may apply for etc.**

- (1) A licensing officer may apply to a JP for an entry warrant authorising the entry of a place for compliance purposes.
- (2) A licensing officer may apply for an entry warrant for a place even if, under section 42(2), the officer may enter the place without an entry warrant.

- (3) The application must be made in accordance with section 43J and must include the prescribed information, if any.

*[Section 43I inserted by No. 38 of 2011 s. 26.]*

**43J. Entry warrant, application for**

- (1) In this section —

***application*** means an application under section 43I;

***remote communication*** means any way of communicating at a distance including by telephone, fax, email and radio.

- (2) A reference in this section to making an application includes a reference to giving information in support of the application.

- (3) An application must be made in person before a JP unless —

- (a) the warrant is needed urgently; and
- (b) the applicant reasonably suspects that a JP is not available within a reasonable distance of the applicant,

in which case —

- (c) the application may be made to the JP by remote communication; and
- (d) the JP must not grant it unless satisfied about the matters in paragraphs (a) and (b).

- (4) An application must be made in writing unless —

- (a) the application is made by remote communication; and
- (b) it is not practicable to send the JP written material,

in which case —

- (c) the application may be made orally; and
- (d) the JP must make a written record of the application and any information given in support of it.

- (5) An application must be made on oath unless —

- (a) the application is made by remote communication; and

- (b) it is not practicable for the JP to administer an oath to the applicant,

in which case —

- (c) the application may be made in an unsworn form; and
  - (d) if the JP issues an entry warrant, the applicant must as soon as is practicable send the JP an affidavit verifying the application and any information given in support of it.
- (6) If on an application made by remote communication a JP issues an entry warrant, the JP must if practicable send a copy of the original warrant to the applicant by remote communication, but otherwise —
- (a) the JP must send the applicant by remote communication any information that must be set out in the warrant; and
  - (b) the applicant must complete a form of warrant with the information received and give the JP a copy of the form as soon as is practicable after doing so; and
  - (c) the JP must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.
- (7) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (6) has the same force and effect as the original warrant.
- (8) If an applicant contravenes subsection (5)(d) or (6)(b), any evidence obtained under the entry warrant is not admissible in proceedings in a court or the State Administrative Tribunal.

*[Section 43J inserted by No. 38 of 2011 s. 26.]*

**43K. Issue and content of entry warrant**

- (1) On an application under section 43I, a JP may issue an entry warrant if satisfied that it is necessary for a licensing officer to enter a place for compliance purposes.

- (2) An entry warrant must contain the following information —
  - (a) a reasonably particular description of the place to which it relates;
  - (b) a reasonably particular description of the compliance purposes for which entry to the place is required;
  - (c) if a contravention of this Act is suspected, the provision concerned;
  - (d) the period, not exceeding 14 days, during which it may be executed;
  - (e) the name of the JP who issued it;
  - (f) the date and time when it was issued.
- (3) An entry warrant must be in the prescribed form.
- (4) If a JP refuses to issue an entry warrant, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

*[Section 43K inserted by No. 38 of 2011 s. 26.]*

**43L. Effect of entry warrant**

- (1) An entry warrant has effect according to its content and this section.
- (2) An entry warrant comes into force when it is issued by a JP.
- (3) An entry warrant may be executed by any licensing officer.

*[Section 43L inserted by No. 38 of 2011 s. 26.]*

**Division 3 — Compliance notices**

*[Heading inserted by No. 38 of 2011 s. 26.]*

**43M. CEO may give compliance notice**

- (1) The CEO may give a licensee a compliance notice if the CEO believes on reasonable grounds that the licensee —
  - (a) is contravening a provision of this Act; or



- (b) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated.
- (2) A compliance notice must —
- (a) be in writing; and
  - (b) specify the provision of this Act (the *relevant provision*) that the CEO believes is being, or has been, contravened; and
  - (c) state, briefly, how it is believed the relevant provision is being, or has been, contravened; and
  - (d) specify the measures the licensee must take to remedy the contravention, or to prevent a further contravention, of the relevant provision, as the case requires; and
  - (e) specify the day on or before which the measures are to be taken; and
  - (f) state that contravention of the notice is an offence under this Act and grounds for disciplinary action under Part 2 Division 6; and
  - (g) inform the licensee that the licensee has a right to apply under section 43O for a review of the CEO's decision to give the notice.
- (3) The day specified under subsection (2)(e) must be at least 7 days after the day on which the compliance notice is given to the licensee.
- (4) The CEO may, by written notice given to the licensee, amend or cancel a compliance notice.

*[Section 43M inserted by No. 38 of 2011 s. 26.]*

**43N. Contravening compliance notice, offence**

A licensee who, without reasonable excuse, fails to comply with a compliance notice given to the licensee commits an offence.

Penalty: a fine of \$12 000.

*[Section 43N inserted by No. 38 of 2011 s. 26.]*

**43O. Review by SAT of decision to give compliance notice**

A licensee aggrieved by a decision of the CEO to give a compliance notice may apply to the State Administrative Tribunal for a review of the decision.

*[Section 43O inserted by No. 38 of 2011 s. 26.]*

**Division 4 — Proceedings and evidence**

*[Heading inserted by No. 38 of 2011 s. 26.]*

**43P. Prosecutions and other proceedings, commencement of etc.**

- (1) Proceedings for an offence under this Act or in respect of any other matter arising under this Act may be commenced in the 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 or other document that the person is so appointed or authorised is to be taken to be proved in the absence of evidence to the contrary.
- (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.

*[Section 43P inserted by No. 38 of 2011 s. 26.]*

**43Q. Evidentiary certificate**

- (1) In proceedings 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 holds or held, or does not or did not hold, a licence in relation to a particular child care service;
  - (b) that a licence specifies or specified, or does not or did not specify, a particular place;
  - (c) the conditions to which a licence is or was subject;
  - (d) that a licence has or had been suspended or cancelled;
  - (e) that a person has or had been disqualified from —
    - (i) holding a licence; or
    - (ii) being a managerial officer of a corporate licensee; or
    - (iii) being the supervising officer for a child care service;
  - (f) that a compliance notice has or had been given to a person;
  - (g) the day, days or period on or during which anything referred to in any of paragraphs (a) to (f) applied.

*[Section 43Q inserted by No. 38 of 2011 s. 26.]*

**43. No privilege against self-incrimination**

- (1) A person is not excused from complying with a direction under section 43B(1)(a) to give information, answer a question or produce a record or document on the ground that complying with the direction might tend to incriminate the person or render the person liable to a penalty.
- (2) However, any information or answer given by an individual in compliance with such a direction is not admissible in evidence against the individual in proceedings under Part 2 Division 6 or in criminal proceedings other than proceedings for perjury or for an offence under section 49.

*[Section 43 inserted by No. 38 of 2011 s. 26.]*

**44. Evidence Act 1906 not affected**

This Division is in addition to and does not affect the operation of the *Evidence Act 1906*.

*[Section 44 inserted by No. 38 of 2011 s. 26.]*

## **Part 5 — Other matters**

### **45A. Information about child care services etc., publication of by CEO**

- (1) The CEO may cause to be published, in any form or manner the CEO considers appropriate, information concerning any of the following —
  - (a) child care services;
  - (b) licensees or other persons involved in the provision of child care services;
  - (c) matters that adversely affect or may adversely affect the interests of children to whom child care services are provided.
- (2) Without limiting subsection (1), information published under this section may include details of —
  - (a) compliance notices; and
  - (b) orders made by the State Administrative Tribunal in proceedings under Part 2 Division 6.
- (3) Information published under this section may identify a particular child care service or a particular person, but not a child.
- (4) The CEO must not publish information under this section unless satisfied that it is in the public interest to do so.
- (5) Without limiting section 51, no civil or criminal liability is incurred by the CEO or any other person in respect of the publication, in good faith, of information under this section.

*[Section 45A inserted by No. 38 of 2011 s. 27.]*

**45. Exemptions from s. 9 etc., Minister's powers as to**

- (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.
- (3A) An order made under subsection (1) may specify conditions subject to which the exemption is to apply.
- (3B) A person who provides a child care service to which an order made under subsection (1) applies must not contravene a condition specified in the order.

Penalty: a fine of \$12 000.
- (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.

*[Section 45 amended by No. 38 of 2011 s. 28.]*

**46. Child care records, production of in legal proceedings**

(1) In this section —

*child care record* means a document in the records of the Department that —

- (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. Obstructing person performing function under Act, offence**

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

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

**48. Impersonating licensing officer, offence**

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 or misleading information in applications etc., offence**

A person must not —

- (a) in, or in connection with, an application under this Act; or
- (b) in compliance or purported compliance with a direction or requirement under this Act; or
- (c) for any other purpose under this Act,

give information that the person knows is false or misleading in a material particular.

Penalty: a fine of \$6 000.

*[Section 49 inserted by No. 38 of 2011 s. 29.]*

**50. Information obtained under Act, disclosure and use of restricted**

- (1) This section applies to a person who is or has been engaged in the performance of functions under this Act.

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- (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 proceedings 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.

*[Section 50 amended by No. 38 of 2011 s. 30.]*

**51A. CEO may require statutory declaration**

The CEO may require any document or information provided to the CEO or a departmental officer for the purposes of this Act to be verified by statutory declaration.

*[Section 51A inserted by No. 38 of 2011 s. 31.]*

**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) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).

*[(4) deleted]*

- (5) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

*[Section 51 amended by No. 38 of 2011 s. 32.]*

**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.

**53A. Regulations may adopt published documents**

- (1) Regulations made under section 52 may adopt the text of any published document specified in the regulations —
  - (a) as that text exists at a particular date; or
  - (b) as that text may from time to time be amended.
- (2) The text may be adopted —
  - (a) wholly or in part; or
  - (b) as modified by the regulations.
- (3) The adoption may be direct (by reference made in the regulations), or indirect (by reference made in any text that is itself directly or indirectly adopted).

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- (4) The adoption of text is of no effect unless —
- (a) the adopted text; and
  - (b) if text is adopted as it may from time to time be amended, either —
    - (i) the amendments to the text; or
    - (ii) the text as amended,

can at all reasonable times be inspected or purchased by the public.

*[Section 53A inserted by No. 38 of 2011 s. 33.]*

**53B. Regulations may prescribe codes of practice**

- (1) Regulations made under section 52 may prescribe a code of practice to apply in relation to the provision of child care services or a particular type, or types, of child care service.
- (2) A code of practice prescribed by the regulations must have been —
  - (a) submitted to the Minister in accordance with section 53C; and
  - (b) approved by the Minister with or without amendments.

*[Section 53B inserted by No. 11 of 2012 s. 25.]*

**53C. Preparation of draft code of practice by CEO**

- (1) The CEO may, with the approval of the Minister, prepare a draft code of practice for submission to the Minister for consideration.
- (2) The CEO must, if the Minister directs, prepare a draft code of practice for submission to the Minister for consideration.
- (3) For the purpose of preparing a draft code of practice, the CEO must arrange for consultation with, and invite submissions from, persons and organisations that the CEO considers would have an interest in the terms of the proposed draft code.

*[Section 53C inserted by No. 11 of 2012 s. 25.]*

**53D. Interim code of practice**

- (1) The regulations may prescribe a code of practice even though the procedures set out in section 53C(3) have not been followed or completed.
- (2) A code of practice prescribed under this section is an interim code of practice, and has effect only for the period (not exceeding 6 months) specified in the regulations.

*[Section 53D inserted by No. 11 of 2012 s. 25.]*

**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**

### **Division 1 — Provisions relating to repeal of *Children and Community Services Act 2004* Part 8**

*[Heading inserted by No. 38 of 2011 s. 34.]*

#### **54. Terms used**

In this Division —

**commencement day** means the day on which section 65<sup>3</sup> comes into operation;

**Part 8 provisions** means the provisions of the *Children and Community Services Act 2004* Part 8<sup>4</sup> in force immediately before the commencement day.

*[Section 54 amended by No. 38 of 2011 s. 35.]*

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

This Division 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<sup>4</sup> provisions by this Act.

*[Section 55 amended by No. 38 of 2011 s. 36.]*

#### **56. Certain regulations continue in force after 10 Aug 2007**

(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*<sup>5</sup>;
- (b) the *Children and Community Services (Family Day Care) Regulations 2006*<sup>6</sup>;
- (c) the *Children and Community Services (Outside School Hours Care) Regulations 2006*<sup>7</sup>;

(d) the *Children and Community Services (Outside School Hours Family Day Care) Regulations 2006*<sup>8</sup>.

- (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.

**57. Exemptions in force immediately before 10 Aug 2007**

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 etc. not decided by 10 Aug 2007**

An application for a licence or the renewal of a licence made under the Part 8<sup>4</sup> 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 in force immediately before 10 Aug 2007**

- (1) A licence under the Part 8<sup>4</sup> 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<sup>4</sup> provisions includes a reference to a licence or permit that has effect as if it were a licence under the Part 8<sup>4</sup> provisions because of the *Children and Community Services Act 2004* Schedule 1 clause 18(1).

**60. References to Part 8 provisions, interpretation of**

If in a written law or other document or instrument there is a reference to a Part 8<sup>4</sup> 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<sup>4</sup> provision.

**61. Transitional regulations**

- (1) If there is no sufficient provision in this Division 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<sup>4</sup> 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*.

*[Section 61 amended by No. 38 of 2011 s. 37.]*

**Division 2 — Provisions relating to *Child Care Services Amendment Act 2011***

*[Heading inserted by No. 38 of 2011 s. 38.]*

**62A. Interpretation Act 1984 not affected**

The provisions of this Division are additional to and do not affect the application of the *Interpretation Act 1984* Part V.

*[Section 62A inserted by No. 38 of 2011 s. 38.]*

**62B. Licensing officers appointed immediately before 7 Jan 2012**

An appointment that was in effect under section 40(1) immediately before the day on which the *Child Care Services Amendment Act 2011* section 24(1) (the **amending provision**) comes into operation is, on and after that day, to be taken to be a designation under section 40(1) as amended by the amending provision.

*[Section 62B inserted by No. 38 of 2011 s. 38.]*

**62C. Certain people who were supervising officers immediately before 7 Jan 2012**

- (1) In this section —

**commencement day** means the day on which the *Child Care Services Amendment Act 2011* section 4(2) comes into operation;

*old definition* means the definition of *supervising officer* in section 3 as in force immediately before the commencement day.

- (2) An individual who, immediately before the commencement day, was the supervising officer for a child care service under paragraph (a)(ii) of the old definition is, on and after that day, to be taken to be an individual approved for the purposes of section 5A(1)(a)(ii) in relation to that service.
- (3) An individual who, immediately before the commencement day, was the supervising officer for a child care service under paragraph (b)(i) or (ii) of the old definition is, on and after that day, to be taken to be an individual approved for the purposes of section 5A(1)(b)(i) in relation to that service.

*[Section 62C inserted by No. 38 of 2011 s. 38.]*

**62D. Suspensions in force immediately before 7 Jan 2012**

- (1) This section applies if, immediately before the day on which the *Child Care Services Amendment Act 2011* section 16 comes into operation, a suspension of a licence (the *existing suspension*) was in effect under this Act.
- (2) The existing suspension continues to have effect until one of the following happens —
  - (a) the suspension is revoked by the CEO under subsection (3);
  - (b) the suspension is revoked by the State Administrative Tribunal on an application under section 30 for a review of the CEO's decision to suspend the licence;
  - (c) the licence is cancelled under section 29 or 30B or expires;
  - (d) the licence is surrendered in accordance with the regulations.
- (3) The CEO may, by written notice given to the licensee, revoke the existing suspension if the CEO —

- (a) is satisfied that the steps specified in the suspension notice relating to the suspension have been taken; or
- (b) is otherwise satisfied that it is appropriate to do so in the circumstances of the particular case.

*[Section 62D inserted by No. 38 of 2011 s. 38.]*

**62E. Transitional regulations**

- (1) If there is no sufficient provision in this Division for dealing with a transitional matter, regulations made 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 purpose of effecting the transition from this Act as in force immediately before the commencement of a provision of the *Child Care Services Amendment Act 2011* to this Act as in force after that commencement.
- (3) Regulations referred to in subsection (1) may provide that a specified provision of this Act does not apply, or applies with specified modifications, to or in relation to any matter.
- (4) If regulations referred to in 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 of the relevant provision of the *Child Care Services Amendment Act 2011*, 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 operate so as —

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**Part 6** Transitional provisions

**Division 2** Provisions relating to Child Care Services Amendment Act 2011

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- (a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State or a local government), the rights of that person existing before the regulations were published in the *Gazette*; or
- (b) to 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*.

*[Section 62E inserted by No. 38 of 2011 s. 38.]*

*[Part 7 (s. 62-73) omitted under the Reprints Act 1984 s. 7(4)(e).]*

## **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 —
  - (a) objections to the grant of licences; and
  - (b) 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 a person in connection with an application under this Act 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 approval of individuals by the CEO for the purposes of section 5A(1)(a)(ii) and (b)(i), including —
  - (a) the making of applications for approval; and
  - (b) matters of which the CEO has to be satisfied before giving approval, including requirements as to the qualifications, training or experience of applicants for approval; and
  - (c) the suspension or cancellation of approval by the State Administrative Tribunal.

8. Providing for and in relation to the nomination of individuals as supervising officers for the purposes of section 5A(1)(b)(ii).
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 in respect of matters under this Act including —
  - (a) fees for applications; and
  - (b) fees by way of penalty for the late lodgment of applications; and

(c) fees for licences,  
and prescribing the persons liable to pay those fees.

[20. *deleted*]

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.
23. Conferring a right to apply to the State Administrative Tribunal for a review of a decision of the CEO made under the regulations.

*[Schedule 1 amended by No. 38 of 2011 s. 39.]*

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### 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. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<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)
<i>Child Care Services Amendment Act 2011</i> Pt. 2	38 of 2011	4 Oct 2011	7 Jan 2012 (see s. 2(b) and <i>Gazette</i> 6 Jan 2012 p. 3)
<b>Reprint 1: The <i>Child Care Services Act 2007</i> as at 27 Apr 2012</b> (includes amendments listed above)			
<i>Education and Care Services National Law (WA) Act 2012</i> Pt. 4 Div. 1	11 of 2012	20 Jun 2012	1 Aug 2012 (see s. 2(c) and <i>Gazette</i> 25 Jul 2012 p. 3411)

- <sup>2</sup> The provisions in this Act amending these Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).
- <sup>3</sup> Section 65 was omitted under the *Reprints Act 1984* s. 7(4)(e).
- <sup>4</sup> The section in this Act repealing the *Children and Community Services Act 2004* Part 8 was omitted under the *Reprints Act 1984* s. 7(4)(e).
- <sup>5</sup> Now known as the *Child Care Services (Child Care) Regulations 2006*.
- <sup>6</sup> Now known as the *Child Care Services (Family Day Care) Regulations 2006*.
- <sup>7</sup> Now known as the *Child Care Services (Outside School Hours Care) Regulations 2006*.
- <sup>8</sup> Now known as the *Child Care Services (Outside School Hours Family Day Care) Regulations 2006*.



## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
advisory body.....	41(1)
amend.....	32(1)
amending provision.....	62B
amendment application.....	3
application.....	43J(1)
approved.....	3
carer.....	3
CEO.....	3
child.....	3
child care record.....	46(1)
child care regulations.....	56(1)
child care service.....	3, 4
commencement day.....	54, 62C(1)
Commonwealth agency.....	38(1)
compliance notice.....	3
compliance purposes.....	3
corporate applicant.....	3
corporate licensee.....	3
corresponding authority.....	38(1)
criminal record check.....	3
Department.....	3
departmental officer.....	3
entry warrant.....	3
exempt service.....	42(1)
existing suspension.....	62D(1)
family day care service.....	3
individual applicant.....	3
interested person.....	38(1)
licence.....	3
licence applicant.....	3
licence application.....	3
licence document.....	3
licensee.....	3
licensing decision.....	30(1)
licensing officer.....	3
managerial officer.....	3
national child care law.....	3
occupier.....	3
old definition.....	62C(1)

**Defined terms**

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parent .....	3
Part 8 provisions .....	54
person aggrieved .....	30(1)
place .....	3
prescribed .....	3
public authority .....	3
record .....	3
relative .....	3
relevant information .....	38(1)
relevant maximum fine .....	30A(3)
relevant provision .....	43M(2)
relevant record .....	3
relevant service .....	14(3), 15(2)
remote communication .....	43J(1)
renewal applicant .....	3
renewal application .....	3
specified .....	13(2), 29(1), 30C(1), 45(2), 61(5), 62E(5)
supervising officer .....	3, 5A(1)
suspension notice .....	3
transitional matter .....	61(2), 62E(2)
usual occupant .....	3
wellbeing .....	3