



Western Australia

Community Services Act 1972

## **Community Services (Outside School Hours Care) Regulations 2002**

These regulations were repealed by the *Children and Community Services Act 2004* s. 250(2)(c) as at 1 Mar 2006 (see *Gazette* 14 Feb 2006 p. 695).

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## **Community Services (Outside School Hours Care) Regulations 2002**

### **Contents**

#### **Part 1 — Preliminary**

1.	Citation	1
2.	Commencement	1
3.	Interpretation	1
4.	Meaning of school age	6
5.	Meaning of on duty	6
6.	Meaning of qualified rescuer (water activities)	7
7.	Meaning of fit and proper person	8

#### **Part 2 — Licences, permits and approvals**

8.	Application for licence or permit	9
9.	Applications by individuals — additional information	9
10.	Applications by bodies — additional information	11
11.	Referees for applicant or responsible officer	12
12.	Further information relevant to application	12
13.	Advertisement of application for licence	13
14.	Number of children for family day care licence or permit	14
15.	Play areas on premises — minimum requirements	14
16.	Issue of permit subject to conditions	15
17.	In-principle approval of proposed premises or modifications	15
18.	Application to provide relief school age family day care	16

**Contents**

---

19.	Transfer of licence prohibited	17
20.	Renewal of licence	17
21.	Review of refusal to renew, cancellation or suspension	18
22.	Emergency suspensions	18
23.	Approval to appoint a new responsible officer	19
24.	Advertisement about new responsible officer	19
25.	Revocation of approval of responsible officer	20
26.	Supervision if licensee or responsible person absent	20
27.	Objections to licensee or responsible officer	21
28.	Surrender of licences, etc.	22
29.	Reasons for adverse decision	22
30.	False or misleading statements	23

**Part 3 — Obligations of licensee or permit holder**

**Division 1 — General obligations**

31.	Compliance with regulations	24
32.	Exemptions	24
33.	Notification of change of circumstances	25
34.	Notification of deaths, injuries and assaults	26
35.	Fire and emergency services requirements	26
36.	School age family day care — criminal record checks for adult residents	27

**Division 2 — Staffing requirements**

37.	Responsible officers	27
38.	Senior contact staff member — outside school hours care centre	28
39.	Staff supervision of enrolled children	28
40.	Additional staff	29
41.	Absent or indisposed staff	29
42.	Criminal record check for each contact staff member	29
43.	Employment of person convicted of prescribed offence	30

**Division 3 — Requirements for premises**

44.	Display of licence	30
45.	Telephone	30

46.	Boundaries to premises and play areas	31
47.	Play equipment and materials	31
48.	Alteration of premises	31
49.	First aid kit	31
50.	Cleanliness, maintenance and repair of premises	32
51.	Smoke or fire detectors	32
52.	Animals on premises	32
53.	Centre premises not to be used as a residence	33
54.	Convicted people banned from premises	33
	<b>Division 4 — Operating procedures</b>	
55.	Compliance with procedures	33
56.	Emergency procedures and rehearsals	34
57.	Behaviour management procedures	34
58.	Bathroom procedures	34
59.	Transport procedures	35
	<b>Division 5 — Administration of care service</b>	
60.	Enrolment form	35
61.	Record of medication	37
62.	Record of injury or accident	37
63.	Other records	38
64.	Retaining and storing records	39
65.	Confidentiality of records	39
66.	Falsification of records	39
67.	Visit from responsible parent	40
68.	Insurance	40
	<b>Division 6 — Mobile child care services</b>	
69.	Application of regulations to mobile services	40
	<b>Part 4 — Operating the care service</b>	
	<b>Division 1 — Number of enrolled children</b>	
70.	Number of children — family day care	41
71.	Number of children at outside school hours care centre	41
72.	Care for children in exceptional circumstances	42
	<b>Division 2 — Contact staff requirements</b>	
73.	Staff requirements — school age family day care	42
74.	Staff requirements — single staff centres	42
75.	Minimum contact staff — outside school hours care centres	43

Contents

---

76.	Contact staff reduction during short periods	43
77.	Contact staff reduction during lunch periods	45
	<b>Division 3 — Programmes and behaviour management</b>	
78.	Programmes	45
79.	Managing the behaviour of children	46
	<b>Division 4 — Excursions and sleepovers</b>	
80.	Excursions from premises	47
81.	First aid kit	48
82.	Excursion plans	48
83.	Contact staff in charge of excursions and water activities	48
84.	Routine excursions — staff numbers	49
85.	Sleepovers — staff numbers	49
86.	Engaging in challenging activities on excursions	50
87.	Challenging activity excursions — staff numbers	50
	<b>Division 5 — Water activities</b>	
88.	Additional requirements for water activities	51
89.	Wading or paddling pools on premises	51
90.	Swimming pools on school age family day care premises	51
91.	Water activities generally	52
92.	Water activities — contact staff required	52
	<b>Division 6 — Safety and health of enrolled children</b>	
93.	Protection of enrolled children leaving the premises	53
94.	Transport of enrolled children	54
95.	Illness or accident to enrolled child	54
96.	Hygiene standards	56
97.	Alcohol and drugs	56
	<b>Part 5 — Other matters</b>	
98.	Exercise of discretion by Director-General	57
99.	Proceedings before Director-General	57
100.	Licensing officers	58
101.	Review of operation of regulations	59

	<b>Part 6 — Transitional provisions and consequential amendments</b>	
102.	Transitional	60
	<b>Schedule 1 — Contact staff requirements</b>	
	<b>Schedule 2 — Risk Assessment Form for Water Activities</b>	
	<b>Notes</b>	
	Compilation table	65
	Provisions that have not come into operation	65
	<b>Defined terms</b>	



Western Australia

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## Community Services (Outside School Hours Care) Regulations 2002

### Part 1 — Preliminary

**1. Citation**

These regulations may be cited as the *Community Services (Outside School Hours Care) Regulations 2002*<sup>1</sup>.

**2. Commencement**

These regulations come into operation on the first anniversary of the day on which they are published in the *Gazette*<sup>1</sup>.

**3. Interpretation**

In these regulations, unless the contrary intention appears —

“**care session**”, in relation to an outside school hours care service, means a discrete period during which enrolled children are in the care of the service;

“**challenging activity**” means any activity (except a water activity) that requires special skills or poses increased risks, and includes —

- (a) abseiling;
- (b) archery;
- (c) bush walking;
- (d) caving; and
- (e) horse riding;

**“contact staff member”**, in relation to an outside school hours care service —

- (a) means a person employed by the licensee or permit holder to take direct care of enrolled children;
- (b) when the licensee or permit holder is personally taking direct care of enrolled children — includes the licensee or permit holder; and
- (c) when a responsible officer is personally taking direct care of enrolled children — includes the responsible officer;

**“convicted person”** means a person who has been convicted of a prescribed offence;

**“criminal record check”** means a document issued by the Australian Federal Police or another body or agency approved by the Director-General that sets out the criminal convictions of an individual for offences under the law of Western Australia, the Commonwealth, another State or a Territory;

**“current criminal record check”** means a criminal record check issued not more than 2 years before the material time;

**“department”** has the same meaning as in the *Public Sector Management Act 1994*;

**“enrolled child”**, in relation to a particular care session of an outside school hours care service, means a child who is enrolled at the service under regulation 60 and is in the care of the service for that care session;

**“first aid qualifications”** means a certificate or other evidence of successful completion of first aid training in at least the following subjects —

- (a) cardiopulmonary resuscitation;
- (b) expired air resuscitation;
- (c) management of emergency situations that could be life threatening or cause permanent damage to a casualty;
- (d) management of injuries;

**“fit and proper person”** has the meaning given in regulation 7;

**“licence”** means —

- (a) an outside school hours care centre licence; or
- (b) a school age family day care licence;

**“licensee”** means the holder of a licence;

**“licensing officer”** means a person appointed under regulation 100;

**“low risk water activity”** means a water activity assessed as low risk under regulation 91(2)(a);

**“lunch period”** means an unbroken period of not more than 2 hours between the hours of 11.30 a.m. and 2.30 p.m. on any day;

**“medium risk water activity”** means a water activity assessed as medium risk under regulation 91(2)(a);

**“on duty”** has the meaning given in regulation 5;

**“outside school hours care centre”** means an outside school hours care service provided under an outside school hours care centre licence or an outside school hours care centre permit;

**“outside school hours care centre licence”** means a licence issued under section 17B(1) of the Act to provide an outside school hours care service on premises other than a private dwelling;

**“outside school hours care centre permit”** means a permit issued under section 17B(2) of the Act to provide an outside school hours care service on premises other than a private dwelling;

**“outside school hours care service”** means a child care service provided outside school hours for children of school age, except such a service that is provided solely for the purposes of —

- (a) a child’s participation in religious instruction or sporting, educational, recreational or cultural events, or activities; or

**r. 3**

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- (b) a child's membership of a non-profit community organisation;

**“parent”** includes guardian, custodian and person having lawful access (whether by common law, written law or court order) to a child;

**“permit”** means —

- (a) an outside school hours care centre permit; or
- (b) a school age family day care permit;

**“premises”** —

- (a) includes land, building, part of a building, place, bus, caravan, trailer, or carriage;
- (b) in relation to an outside school hours care service — means the premises specified in the licence or permit under which the service is operated; and
- (c) in relation to an application for a licence or permit, means the premises at which the applicant for the licence or permit proposes to operate the outside school hours care service to which the application relates;

**“prescribed offence”** means —

- (a) an offence under Chapter XXII, XXVIII, XXIX, XXX, XXXI, XXXIII, XXXIII A, XXXIII B, XXXVIII or XXXIX of *The Criminal Code*;
- (b) an offence under Part 3 of the *Prostitution Act 2000*;
- (c) an offence under section 31A, Part VII or section 130 of the *Child Welfare Act 1947*; or
- (d) an offence under a law of the Commonwealth, another State or a Territory that is equivalent to an offence referred to in paragraph (a), (b) or (c);

**“qualified care giver”** means a person who holds —

- (a) a Certificate IV, diploma or degree in children's studies covering the age range of 4-14 years;

- (b) a degree or diploma in education, recreation, sport science or leisure studies from a recognised Australian university or other tertiary institution; or
- (c) a qualification equivalent to the qualification in paragraph (a) or (b) in the opinion of the Director-General;

**“qualified rescuer”** has the meaning given in regulation 6;

**“responsible officer”**, in relation to a body corporate, department or public authority, means the individual who is or is proposed to be the officer of the body, department or authority who is directly responsible for the effective supervision of the outside school hours care service provided by the body, department or authority;

**“RLSSA”** means the Royal Life Saving Society — Australia, Western Australia Branch Inc.;

**“school age”**, in relation to a child, has the meaning given by regulation 4;

**“school age family day care”** means an outside school hours care service provided under a school age family day care licence or school age family day care permit;

**“school age family day care licence”** means a licence issued under section 17B(1) of the Act to provide an outside school hours care service in a private dwelling in a family or domestic environment;

**“school age family day care permit”** means a permit issued under section 17B(2) of the Act to provide an outside school hours care service in a private dwelling in a family or domestic environment;

**“secondary programme”** has the same meaning as in regulation 3(1) of the *School Education Regulations 2000*;

**“senior contact staff member”**, in relation to an outside school hours care centre, means —

- (a) the licensee or permit holder; or

r. 4

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- (b) if the licensee or permit holder has appointed a person as the senior contact staff member under regulation 38 — that person;

“**SLSWA**” means Surf Life Saving Western Australia Incorporated;

“**volunteer**” means a person who is not a contact staff member and who is at least 16 years of age;

“**water activity**” means swimming or any other activity in a body of water;

“**working day**” means a day that is not a Saturday, Sunday, public holiday or public service holiday.

*[Regulation 3 amended in Gazette 25 Nov 2003 p. 4759.]*

**4. Meaning of school age**

- (1) A child is of “**school age**” in a particular year if the child —
- (a) has reached 5 years of age or will reach 5 years of age in that year; and
  - (b) has commenced school but has not commenced a secondary programme and will not commence a secondary programme in that year.
- (2) School age is prescribed for the purposes of the definition of “child care services” in the Act.

**5. Meaning of on duty**

- (1) A contact staff member is “**on duty**” if he or she is directly engaged in caring for enrolled children, but not if engaged in cleaning the premises or in administrative or other duties.
- (2) Subregulation (1) does not prevent a contact staff member who is on duty from undertaking minor incidental duties such as marking the roll for a care session or carrying out minor cleaning duties arising directly from the care of a particular child.

**6. Meaning of qualified rescuer (water activities)**

- (1) A person is a “**qualified rescuer**” in relation to a low risk water activity in a pool environment or other still water if the person holds a minimum of one of the following qualifications —
  - (a) an RLSSA Aquatic Rescue Certificate;
  - (b) an RLSSA Bronze medallion;
  - (c) an RLSSA Swimming Teacher Rescue Certificate; or
  - (d) a qualification that is, in the opinion of the Director-General, equivalent to a qualification referred to in paragraph (a), (b) or (c).
- (2) A person is a “**qualified rescuer**” in relation to a medium risk water activity in a pool environment or other still water if the person holds a minimum of one of the following qualifications —
  - (a) an RLSSA Bronze medallion; or
  - (b) a qualification that is, in the opinion of the Director-General, equivalent to the qualification referred to in paragraph (a).
- (3) A person is a “**qualified rescuer**” in relation to a low risk water activity in the sea if the person holds a minimum of one of the following qualifications —
  - (a) an SLSWA Bronze medallion;
  - (b) an SLSWA Surf Rescue certificate; or
  - (c) a qualification that is, in the opinion of the Director-General, equivalent to a qualification referred to in paragraph (a) or (b).
- (4) A person is a “**qualified rescuer**” in relation to a medium risk water activity in the sea if the person holds a minimum of one of the following qualifications —
  - (a) an SLSWA Bronze medallion; or
  - (b) a qualification equivalent to the qualification referred to in paragraph (a).

**r. 7**

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**7. Meaning of fit and proper person**

An individual is a “**fit and proper person**” for the purposes of section 17B(3)(a) of the Act in relation to an outside school hours care service if he or she —

- (a) is at least 21 years of age;
- (b) is capable of providing, or ensuring the provision of, an adequate standard of care for the children for whom the service is or will be provided;
- (c) has never been convicted of a prescribed offence;
- (d) is otherwise of good character;
- (e) understands the needs of school age children; and
- (f) is otherwise suitable to be entrusted with the care of school age children or with the responsibility of effectively supervising the outside school hours care service, as the case requires.

## **Part 2 — Licences, permits and approvals**

### **8. Application for licence or permit**

- (1) An application for a licence or permit must —
  - (a) be in a form approved by the Director-General;
  - (b) be lodged with the Director-General at least 60 days before the proposed outside school hours care service is expected to begin operating, or as otherwise permitted by the Director-General;
  - (c) state whether the applicant proposes to provide a school age family day care service or an outside school hours care centre;
  - (d) state the maximum number of children whom the applicant proposes to enrol for a care session;
  - (e) give details of any child care service previously provided by the applicant, and of any other relevant experience and qualifications;
  - (f) give the address of the premises on which the applicant proposes to provide the service;
  - (g) include a plan showing the facilities to be provided on the premises, including measurements of all indoor and outdoor spaces that form part of the premises; and
  - (h) give any other relevant information required by the Director-General.
- (2) An application is taken not to have been made until all the information required under this regulation and regulations 9 and 10 has been given to the Director-General.

### **9. Applications by individuals — additional information**

- (1) An application by an individual for a licence or permit must also include the following —
  - (a) the full name and all former names of the applicant;

**r. 9**

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- (b) the postal address and telephone number of the applicant;
  - (c) the residential address and duration of residence at that address of the applicant;
  - (d) the date and place of birth of the applicant;
  - (e) details of the experience and training of the applicant that is relevant to the application;
  - (f) particulars of any condition relating to the health of the applicant that could affect the ability of the applicant to carry out effective supervision of the proposed outside school hours care service;
  - (g) a criminal record check made in relation to the applicant not more than 6 months before the date on which the application is lodged;
  - (h) a statement as to whether or not the applicant has been charged with or convicted of a prescribed offence since the date on which the criminal record check was made;
  - (i) the name, address and telephone number of each of 3 referees as mentioned in regulation 11;
  - (j) details of the circumstances in which and the length of time for which each referee has known the applicant.
- (2) An application for a licence or permit to provide school age family day care must also —
- (a) include details of the applicant's first aid qualifications;
  - (b) state the number of children of the applicant who have reached school age and who are likely to be on the premises while the proposed service is operating;
  - (c) state whether the applicant has any children who have not yet reached school age and who are likely to be on the premises while the proposed service is operating;  
and
  - (d) if the applicant proposes to be identified with or supported by a family day care scheme operating under

the auspices of the Commonwealth Department of State that has responsibility for family and community services — give particulars of the scheme.

**10. Applications by bodies — additional information**

- (1) An application by a body corporate, department or public authority for a licence or permit must include the following —
  - (a) the full name of the applicant;
  - (b) in the case of a company — a printout from the national database kept by the Australian Securities and Investments Commission containing up-to-date information obtained by the Commission about the company;
  - (c) in the case of a department or public authority — the name of the chief executive officer of the department or authority;
  - (d) in the case of an incorporated association — a copy of the certificate of incorporation of the association and the names and addresses of the office bearers of the association;
  - (e) the applicant's registered address in Western Australia or official postal address in Western Australia;
  - (f) the full name and all known former names of the applicant's responsible officer;
  - (g) the postal address and telephone number of the responsible officer;
  - (h) the date and place of birth of the responsible officer;
  - (i) the name, address and telephone number of each of 3 referees for the responsible officer as mentioned in regulation 11;
  - (j) details of the circumstances in which and the length of time for which each referee has known the responsible officer.

**r. 11**

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- (2) The application must be accompanied by —
  - (a) a criminal record check made in relation to the responsible officer not more than 6 months before the date on which the application is lodged; and
  - (b) a statement by the responsible officer indicating whether or not the responsible officer has been charged with or convicted of a prescribed offence since the date on which the criminal record check was made.

**11. Referees for applicant or responsible officer**

- (1) The referees named in an application for a licence or permit in relation to the applicant or a responsible officer must include —
  - (a) a referee to whom the applicant or responsible officer is known, and who has had experience in children's services, education or recreation;
  - (b) a referee who is a previous employer of the applicant or responsible officer, or who has worked with him or her in a paid or unpaid capacity; and
  - (c) a referee of good standing in the community who can attest to the good character of the applicant or responsible officer.
- (2) A person is not eligible to act as a referee for an applicant or a responsible officer if the person is related, married, or related by marriage, to him or her or is a de facto partner of the applicant or responsible officer.

*[Regulation 11 amended in Gazette 30 Jun 2003 p. 2597.]*

**12. Further information relevant to application**

- (1) The Director-General may ask an applicant under these regulations to provide any additional information that is within the possession or control of the applicant that is relevant to making a decision on the application.

- (2) If the Director-General asks an applicant for additional information, the Director-General does not have to consider the application, or consider it further, until the information is provided.

**13. Advertisement of application for licence**

- (1) The applicant for a licence or permit must arrange for notice of the application to be published twice in an edition of the *West Australian* newspaper circulating in the district in which the outside school hours care service is proposed to be located.
- (2) The notice must be published —
- (a) first within 28 days after the date on which the application was lodged; and
  - (b) again not less than 7 days nor more than 14 days after it was first published.
- (3) The notice must include the following —
- (a) the full name and address of the applicant;
  - (b) if the applicant is a body corporate, department or public authority — the full name and address of the responsible officer;
  - (c) if the applicant is a body corporate — the name and address of the chief executive officer and each director of the body corporate;
  - (d) if the applicant is a department or public authority — the name of the chief executive officer of the department or authority;
  - (e) if the applicant is an incorporated association — the names and addresses of the office bearers of the association;
  - (f) the address of the premises at which the applicant proposes to operate the outside school hours care service;

**r. 14**

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- (g) a statement to the effect that an objection to the issue of the licence or permit may be made by writing to the Director-General, at the address stated in the advertisement, within 14 days after the day on which the later advertisement is published.
- (4) The licence or permit is not to be issued unless the Director-General has received proof that the applicant has complied with this regulation.

**14. Number of children for family day care licence or permit**

- (1) The number of children specified for the purposes of section 17B(1) or (2) of the Act in a school age family day care licence or school age family day care permit is not to exceed 7, and is to include the number of children of the applicant who —
  - (a) will be of school age during the period for which the licence or permit is to be in force; and
  - (b) are likely to be on the premises during care sessions.
- (2) A licence or permit to provide school age family day care is not to be issued to a person who has a child younger than school age if the child is likely to be on the premises during care sessions.

**15. Play areas on premises — minimum requirements**

- (1) The number of children specified in a licence or permit for the purposes of section 17B(1) of the Act must not exceed the number appropriate to the size of the premises as provided in subregulation (2) and to the facilities provided in accordance with subregulations (5) and (6).
- (2) The premises must have —
  - (a) an area of indoor space suitable for children's play of at least 3.25 m<sup>2</sup> multiplied by the number equal to the number of children specified in the licence or permit; and

- (b) an area of outdoor space suitable for children's play of at least 9.3 m<sup>2</sup> multiplied by the number equal to the number of children specified in the licence or permit.
- (3) However, the Director-General may waive or vary the outdoor space requirements under subregulation (2)(b) if the outdoor space available is augmented by —
  - (a) an equivalent area of playing space within walking distance for the enrolled children; or
  - (b) a larger indoor space suitable for children's play.
- (4) When calculating the area of indoor space for the purposes of subregulation (2)(a) the area of any built-in cupboard, bench, passageway, thoroughfare, bathroom, toilet or shower is not to be taken into account.
- (5) The indoor and outdoor play areas must be clearly defined and identifiable.
- (6) The indoor play areas must include a separate and clearly defined space suitable for relaxation or quieter activities such as reading and homework.

**16. Issue of permit subject to conditions**

Before issuing a permit subject to a condition the Director-General must, as far as is practicable, seek the applicant's agreement to the terms of the condition.

**17. In-principle approval of proposed premises or modifications**

- (1) An applicant for a licence or permit, or a licensee or permit holder, may request the Director-General to indicate whether proposed premises, or construction or modifications proposed to be carried out on existing premises, would comply with these regulations for the purposes of the licence or permit.
- (2) The request must be accompanied by plans showing details of the proposed premises or the proposed construction or modifications.

**r. 18**

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- (3) The Director-General may indicate whether or not the proposed premises, or the premises when constructed or modified as shown on the plans, would comply with these regulations.
- (4) An indication by the Director-General that premises would comply with these regulations does not authorise the applicant to operate an outside school hours care service on the premises.

**18. Application to provide relief school age family day care**

- (1) An application for approval to provide relief school age family day care under the *Community Services (Child Care Services) Exemption Order 1991* must —
  - (a) be made in a form approved by the Director-General;
  - (b) be accompanied by a criminal record check in respect of the applicant issued not more than 6 months before the day on which the application is made;
  - (c) a statement as to whether or not the applicant has been charged with or convicted of a prescribed offence since the date on which the criminal record check was made; and
  - (d) be accompanied by the name, address and telephone number of 3 referees who are not related, married or related by marriage to the applicant, or in a de facto relationship with the applicant.
- (2) The Director-General may approve, or refuse to approve, an application under subregulation (1) and may revoke an approval at any time.
- (3) An approval to provide relief school age family day care may be made subject to such conditions as the Director-General thinks fit.

*[Regulation 18 amended in Gazette 30 Jun 2003 p. 2597.]*

**19. Transfer of licence prohibited**

A licence or a permit is not transferable and cannot vest by operation of law in any other person.

**20. Renewal of licence**

- (1) A licensee may apply to the Director-General for the renewal of the licence.
- (2) An application must —
  - (a) be in a form approved by the Director-General;
  - (b) be lodged with the Director-General at least 30 days before the expiry date of the licence;
  - (c) be accompanied by a criminal record check, issued not more than 6 months previously, in respect of the licensee or, if the licensee is not an individual, the responsible officer;
  - (d) indicate whether or not the licensee or the responsible officer respectively has been charged with or convicted of a prescribed offence since the criminal record check was issued; and
  - (e) include any other relevant information required by the Director-General.
- (3) The Director-General may refuse to renew the licence if the Director-General —
  - (a) is no longer satisfied that the licensee is qualified to be issued with a licence in terms of section 17B(3)(a) or (b) of the Act; or
  - (b) is satisfied that the licensee has persistently failed to comply with the regulations.
- (4) A licence that is suspended may be renewed without affecting the suspension, but the suspension continues until it is removed or the licence is revoked or cancelled or expires.

**r. 21**

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**21. Review of refusal to renew, cancellation or suspension**

- (1) Before refusing to renew a licence or cancelling or suspending a licence or permit, the Director-General must give the licensee or permit holder written notice of the proposed decision.
- (2) The notice must —
  - (a) set out the grounds for making the proposed decision; and
  - (b) inform the licensee or permit holder that the licensee or permit holder is entitled to apply for a review of the matter within 21 days after the day on which the notice was served on the licensee or permit holder.
- (3) If the licensee or permit holder applies for review of the matter within the 21 days the Director-General must give the licensee or permit holder an opportunity to make submissions on the matter before deciding whether or not to refuse to renew the licence or to suspend or cancel the licence or permit.

**22. Emergency suspensions**

- (1) Despite regulation 21, the Director-General may suspend a licence or permit at any time without notice if he or she is satisfied that the continuation of the licence or permit would expose a child to the imminent risk of serious harm.
- (2) If the Director-General suspends a licence or permit under subregulation (1), the Director-General must as soon as practicable give written notice of the grounds for suspension to the licensee or permit holder.
- (3) The notice must —
  - (a) set out the grounds for the suspension; and
  - (b) inform the licensee or permit holder that the licensee or permit holder is entitled to apply to the Director-General for review of the suspension within 21 days after the day on which the notice was served on the licensee or permit holder.

- (4) If the licensee or permit holder applies for review of the suspension within the 21 days the Director-General must give the licensee or permit holder an opportunity to make submissions on the matter.

**23. Approval to appoint a new responsible officer**

- (1) A licensee or permit holder may apply to the Director-General to approve the appointment of a person as the responsible officer of the licensee or permit holder.
- (2) An application must —
- (a) be in a form approved by the Director-General; and
  - (b) include the information about the person that the licensee is required to include about the responsible officer in an application for a licence or permit.
- (3) The Director-General may approve the appointment of the person if he or she is satisfied in relation to the person of the matters set out in section 17B(3) of the Act.
- (4) However, the Director-General must not approve the appointment until he or she has received proof that the applicant has complied with regulation 24.

**24. Advertisement about new responsible officer**

- (1) The licensee or permit holder must arrange for notice of an application under regulation 23 to be published twice in an edition of the *West Australian* newspaper circulating in the district in which the outside school hours care service is proposed to be located.
- (2) The notice must be published —
- (a) first within 7 days after the date on which the application was lodged; and
  - (b) again not less than 3 days nor more than 7 days after it was first published.

**r. 25**

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- (3) The notice must include —
- (a) the full name and address of the applicant;
  - (b) the full name and address of the person proposed as the responsible officer;
  - (c) the address of the premises specified in the licence; and
  - (d) a statement to the effect that an objection to the appointment of the person as the responsible officer of the licensee or permit holder may be made by writing to the Director-General, at the address stated in the advertisement, within 14 days after the day on which the later advertisement is published.

**25. Revocation of approval of responsible officer**

The Director-General may revoke the approval of the appointment of a person as a responsible officer if the Director-General ceases to be satisfied in relation to the person of the matters set out in section 17B(3) of the Act, whether the approval was given in the course of issuing the licence or permit or under regulation 23.

**26. Supervision if licensee or responsible person absent**

- (1) The Director-General may, in writing, authorise a person to be directly responsible for the effective supervision of an outside school hours care service in place of the licensee or permit holder or the responsible officer of the licensee or permit holder if —
- (a) the licence is cancelled or suspended on the grounds that the licensee, permit holder or responsible officer is no longer a fit and proper person for the purposes of section 17B(3) of the Act; or
  - (b) the licensee, permit holder or responsible officer is or will be for any reason unable for more than 14 consecutive days to supervise the child care service effectively.

- (2) When deciding whether to give an authorisation under subregulation (1), the Director-General is to take into account whether or not the continued provision of the service is in the best interests of the children for whom the service is provided.
- (3) A person authorised under subregulation (1) is directly responsible for the effective supervision of the service —
  - (a) for the period specified in the authorisation; and
  - (b) in accordance with the licence or permit and any directions or conditions set out in the authorisation.
- (4) The period specified in the authorisation must not be longer than 6 months.

**27. Objections to licensee or responsible officer**

- (1) Any person may, by writing to the Director-General —
  - (a) object to the issue or renewal of a licence or the issue of a permit on the grounds that the applicant or the applicant's responsible officer is not a fit and proper person for the purposes of section 17B(3) of the Act;
  - (b) object to the issue or renewal of a licence or permit on the grounds that the location of the premises is inappropriate for the outside school hours care service; or
  - (c) object to the approval under regulation 23(3) of a person as the responsible officer of a licensee or permit holder on the grounds that the person is not a fit and proper person for the purposes of section 17B(3) of the Act.
- (2) An objection must —
  - (a) be in writing; and
  - (b) set out the grounds on which it is made.
- (3) If any objections are given to the Director-General within 14 days after the later of the 2 advertisements is published under regulation 13 or 23(3), the Director-General must consider the

**r. 28**

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objections before deciding whether or not to issue the licence or permit, or approve the person as responsible officer, as the case requires.

- (4) If an objection is given to the Director-General at any other time, the Director-General may consider it.

**28. Surrender of licences, etc.**

- (1) If a licence or permit is suspended, cancelled or surrendered, the licensee must immediately return the licence or permit to the Director-General.
- (2) When the Director-General lifts the suspension of a licence or permit that has been returned to the Director-General, the Director-General must give the licence or permit back to the licensee.
- (3) A licensee or permit holder may at any time by notice in writing to the Director-General surrender the licence or permit and upon surrender the licence or permit ceases to have effect.
- (4) Where the holder of a licence or permit dies or becomes bankrupt or is, in the opinion of the Director-General, incapable for any other reason of providing the outside school hours care service to which the licence or permit relates, the holder of the licence or permit is taken to have surrendered the licence or permit.

**29. Reasons for adverse decision**

- (1) If the Director-General decides —
- (a) not to issue a licence or permit;
  - (b) not to renew a licence; or
  - (c) to specify conditions in a permit,

the licensee or permit holder, or the applicant for the licence or permit, may ask the Director-General to give reasons for the decision.

- (2) The Director-General must give the applicant written reasons for the decision within 21 days of receiving the request.

**30. False or misleading statements**

A person must not, in connection with an application under these regulations, make a statement, or give any information, that the person knows is false or misleading in a material particular.

Penalty: \$1 000.

## **Part 3 — Obligations of licensee or permit holder**

### **Division 1 — General obligations**

#### **31. Compliance with regulations**

- (1) A licensee or permit holder must ensure that —
  - (a) contact staff members are aware of, and meet, their obligations under these regulations; and
  - (b) Part 4 is complied with in relation to the operation of the outside school hours care service.
- (2) A permit holder must ensure that any conditions to which the permit is subject are complied with in relation to the outside school hours care service.

Penalty: \$1 500 and a daily penalty of \$100.

#### **32. Exemptions**

- (1) The Director-General may, in special circumstances, exempt a licensee or permit holder from the obligation to comply with these regulations for the period specified in the exemption.
- (2) An exemption must —
  - (a) be in writing;
  - (b) identify the provision of the regulations to which the exemption relates; and
  - (c) specify the period for which it is to be in force.
- (3) An exemption may be expressed to be in force —
  - (a) for as long as the special circumstances set out in the exemption continue; or
  - (b) for as long as a condition specified in the exemption is complied with.
- (4) The Director-General may renew or revoke an exemption.

- (5) An exemption stops being in force at the end of the period specified in it under subregulation (2)(c) unless it is sooner revoked.

**33. Notification of change of circumstances**

- (1) A licensee or permit holder must immediately notify the Director-General in writing if any of the following happens —
- (a) the licensee or permit holder ceases to occupy the premises specified in the licence or permit;
  - (b) the person appointed as the responsible officer of the licensee or permit holder stops being directly responsible for the effective supervision of the outside school hours care service;
  - (c) if the licensee is an individual — the licensee is or will be for any reason unable for more than 14 consecutive days to be directly responsible for the effective supervision of the outside school hours care service;
  - (d) if the licensee is a company — there is a change in the directorship of the company, or in the office of chief executive officer of the company;
  - (e) if the licensee is an incorporated association — there is a change in the office bearers of the association;
  - (f) the licensee or permit holder, or the responsible officer of the licensee or permit holder, is convicted of a prescribed offence;
  - (g) the licensee or permit holder becomes aware of any change to any other fact or circumstance relating to or affecting the provision of the outside school hours care service.
- (2) The notice must include particulars of the change of circumstances, including, where relevant, the name and address of the new chief executive officer, director or office bearer.
- Penalty: \$1 000 and a daily penalty of \$50.

**34. Notification of deaths, injuries and assaults**

- (1) The licensee or permit holder must notify the Director-General of —
  - (a) the death of an enrolled child during a care session and the circumstances in which the death occurred;
  - (b) an injury to an enrolled child during a care session that results in the child's being admitted to a hospital, the nature of the injury and the circumstances in which it occurred; and
  - (c) any allegation of abuse, neglect or assault, including sexual assault, of an enrolled child during a care session, or of an offence under Chapter XXII of *The Criminal Code* committed against an enrolled child during a care session, that is made against the licensee or permit holder, a contact staff member, volunteer or, in the case of school age family day care, against a person residing on the premises.
- (2) The notification must be given within one working day after the day on which the death or injury occurred or the allegation was made.
- (3) The licensee or permit holder must notify the Director-General of the outcome of any investigation into an allegation referred to in subregulation (1)(c).

**35. Fire and emergency services requirements**

The licensee or permit holder must ensure that any relevant fire safety requirements of the Fire and Emergency Services Authority of Western Australia established by the *Fire and Emergency Services Authority of Western Australia Act 1998* are complied with in relation to the outside school hours care service.

**36. School age family day care — criminal record checks for adult residents**

- (1) The holder of a school age family day care licence or school age family day care permit must ensure that each other person who has reached 18 years of age and who ordinarily resides on the premises provides the licensee or permit holder with a current criminal record check within the period described in subregulation (2) and after that at intervals of not more than 2 years.

Penalty: \$1 500 and a daily penalty of \$100.

- (2) For the purposes of subregulation (1), the period is —
- (a) 30 days after the issue of the licence or permit; or
  - (b) 30 days after the other person first resides on the premises,

whichever is the later period.

- (3) The licensee or permit holder must —
- (a) keep a copy of each criminal record check provided under subregulation (1); and
  - (b) on the request of the Director-General, make the copy available for inspection.

Penalty: \$1 500 and a daily penalty of \$100.

**Division 2 — Staffing requirements**

**37. Responsible officers**

- (1) A licensee or permit holder must not permit a person to carry out the functions of the responsible officer of the licensee or permit holder unless —
- (a) the person is specified as the responsible officer in the licence or permit; or

- (b) the Director-General has approved the person's appointment as responsible officer of the licensee or permit holder under regulation 23(3).

Penalty: \$1 500.

- (2) Despite subregulation (1), if the licensee or permit holder complies with regulation 33(1)(b) and applies within 28 days for approval under regulation 23 to appoint another person as responsible officer, the proposed appointee may carry out the functions of the responsible officer until the Director-General decides whether or not to approve the appointment.

**38. Senior contact staff member — outside school hours care centre**

- (1) If the holder of a licence or permit for an outside school hours care centre is an individual, but does not act personally as the senior contact staff member of an outside school hours care centre, the licensee or permit holder must appoint a person as the senior contact staff member.
- (2) If the holder of a licence or permit for an outside school hours care centre is a corporate body, department or public authority, but the responsible officer does not act personally as the senior contact staff member of an outside school hours care centre, the licensee or permit holder must appoint a person as the senior contact staff member.
- (3) A senior contact staff member must be a person who is at least 21 years of age and is a qualified care giver.
- (4) The senior contact staff member is responsible for the development and implementation of programmes for the children in the care of the outside school hours care centre.

**39. Staff supervision of enrolled children**

- (1) The licensee or permit holder of an outside school hours care service must ensure that the contact staff members on duty supervise the enrolled children in a manner that is sufficient to

ensure the safety and wellbeing of the children and is appropriate to the children's stage of development.

- (2) Without limiting subregulation (1), an ill or injured child must be under the direct supervision of a contact staff member.
- (3) Where the children are supervised by one person, the licensee or permit holder must ensure that there is at least one other person over the age of 21 years, whether on the premises or not, who is available to render assistance in an emergency.

**40. Additional staff**

The Director-General may require a licensee or permit holder to employ contact staff for a care session in addition to those required under regulation 73, 74 or 75 where the special needs of one or more children attending the outside school hours care service during the care session require the additional staff.

**41. Absent or indisposed staff**

The licensee or permit holder must develop and set down in writing appropriate procedures to be followed by staff members for dealing with the situation where a staff member fails to report for duty, becomes ill or injured, or is otherwise required to leave the premises at short notice.

**42. Criminal record check for each contact staff member**

- (1) Subject to subregulation (3), the licensee or permit holder must not employ or continue to employ a person as a contact staff member unless the person gives the licensee or permit holder a copy of a current criminal record check for the person within 30 days after the person is first employed as a contact staff member, and after that at intervals of not more than 2 years.

*[(2), (3) repealed]*

- (4) The Director-General may request the licensee or permit holder to produce to the Director-General a current criminal record check in respect of a contact staff member.

- (5) The licensee or permit holder must comply with a request under subregulation (4) within 30 days after it is made.

*[Regulation 42 amended in Gazette 4 Jul 2003 p. 2690-1.]*

**43. Employment of person convicted of prescribed offence**

- (1) The licensee or permit holder must not employ a person who has been convicted of a prescribed offence as a contact staff member without the approval of the Director-General.  
Penalty: \$1 500 and a daily penalty of \$100.
- (2) It is a defence in proceedings for an offence against subregulation (1) to show that the licensee or permit holder did not know, and could not reasonably be expected to have known, that the person had been convicted of a prescribed offence.

**Division 3 — Requirements for premises**

**44. Display of licence**

- (1) A licensee or permit holder must display the licence or permit in a prominent position at or near the main entrance to the premises.  
Penalty: \$1 500 and a daily penalty of \$100.
- (2) A person must not alter or deface a licence or permit, or attempt to alter or deface a licence or permit.  
Penalty: \$1 500.

**45. Telephone**

The licensee or permit holder must ensure that a telephone service is connected to the premises.  
Penalty: \$1 500 and a daily penalty of \$100.

**46. Boundaries to premises and play areas**

The licensee or permit holder must display a diagram on the premises showing clearly the boundaries of the premises and the areas available for children's play.

Penalty: \$1 500 and a daily penalty of \$100.

**47. Play equipment and materials**

The licensee or permit holder must ensure that —

- (a) equipment and materials that support the developmental and recreational needs of the enrolled children are provided on the premises; and
- (b) there is enough storage space on the premises for the equipment and materials.

**48. Alteration of premises**

A licensee or permit holder must not significantly modify the premises or use other premises (except for the purposes of an excursion) without the written approval of the Director-General.

Penalty: \$1 500 and a daily penalty of \$100.

**49. First aid kit**

- (1) The licensee or permit holder must ensure that a fully equipped and properly maintained first aid kit is kept on the premises at all times, except in the circumstances permitted by regulation 81(2).
- (2) Each first aid kit kept by an outside school hours care service for the purposes of these regulations must include the following items —
  - (a) a triangular bandage;
  - (b) a crepe bandage;
  - (c) an adequate variety of sterile wound dressings;
  - (d) a resuscitation face shield;

(e) a notebook and pencil;

(f) scissors;

(g) disposable gloves.

**50. Cleanliness, maintenance and repair of premises**

(1) The licensee or permit holder must ensure that the premises and all equipment and furnishings on the premises are maintained in a thoroughly safe, clean and hygienic condition and in good repair.

(2) The licensee or permit holder must ensure that the premises are kept free from rodents, cockroaches and other vermin.

Penalty: \$1 500 and a daily penalty of \$100.

**51. Smoke or fire detectors**

The licensee or permit holder must ensure that the premises are equipped with smoke or fire detection devices fitted in accordance with the manufacturer's instructions.

Penalty: \$1 500 and a daily penalty of \$100.

**52. Animals on premises**

(1) The licensee must ensure that any animal or bird kept on or about the premises is maintained in a clean and healthy condition.

Penalty: \$1 500 and a daily penalty of \$100.

(2) If an animal or bird is kept on the premises, the licensee or permit holder must provide an area on the premises where the animal or bird can be kept that is separate and apart from any area used by children.

Penalty: \$1 500 and a daily penalty of \$100.

(3) If an animal or bird is kept on the premises, the Director-General may direct the licensee or permit holder to keep it in the separate area referred to subregulation (2).

- (4) The licensee or permit holder must comply with a direction under subregulation (3).

Penalty: \$1 500 and a daily penalty of \$100.

**53. Centre premises not to be used as a residence**

The holder of a licence or permit for an outside school hours care centre must ensure that no part of the premises is used as a residence.

Penalty: \$1 500 and a daily penalty of \$100.

**54. Convicted people banned from premises**

- (1) The licensee or permit holder must ensure that a person who has been convicted of a prescribed offence is not permitted on the premises during a care session without the approval of the Director-General.

Penalty: \$1 500.

- (2) In proceedings for an offence under subregulation (1), it is a defence for the licensee or permit holder to show that the licensee or permit holder did not know, and could not reasonably be expected to have known, that the person had been convicted of a prescribed offence.

**Division 4 — Operating procedures**

**55. Compliance with procedures**

The licensee or permit holder must ensure that —

- (a) copies of the procedures developed under these regulations are made available to contact staff members and parents of enrolled children; and
- (b) contact staff members are aware of the procedures and follow them as far as practicable.

Penalty: \$1 500 and a daily penalty of \$100.

**56. Emergency procedures and rehearsals**

- (1) The licensee or permit holder must develop and set down in writing —
  - (a) evacuation and emergency procedures to be followed by contact staff members in case of fire, natural disaster or other emergencies; and
  - (b) appropriate procedures to be followed by contact staff members for the care of ill or injured children.
- (2) The licensee or permit holder must ensure that a rehearsal of the evacuation and emergency procedures set down under subregulation (1) is conducted at least once in every school term and school holiday.

Penalty: \$1 500 and a daily penalty of \$100.

**57. Behaviour management procedures**

The licensee or permit holder must develop and set down in writing appropriate procedures to be followed by contact staff members in managing the behaviour of the children.

Penalty: \$1 500 and a daily penalty of \$100.

**58. Bathroom procedures**

The licensee or permit holder must develop and set down in writing —

- (a) appropriate procedures to be followed by contact staff members to ensure the health and safety of enrolled children when they use bathroom facilities; and
- (b) appropriate procedures to ensure the privacy of enrolled children when they use bathroom facilities that are designed for children not yet of school age.

**59. Transport procedures**

- (1) The licensee or permit holder must develop and set down in writing appropriate procedures for the transport of enrolled children that include, but are not limited to —
  - (a) procedures for supervising enrolled children while walking to and from a vehicle and while travelling in a vehicle;
  - (b) subject to subregulation (2), the kinds of vehicle which may be used to transport enrolled children;
  - (c) strategies for locating and collecting enrolled children from school;
  - (d) procedures for engaging and utilising the services of transport providers and volunteers;
  - (e) rules relating to the behaviour of enrolled children while they are being collected or transported and strategies for enforcing those rules; and
  - (f) procedures in case of a breakdown of the vehicle or an accident or other emergency.
- (2) A licensee, permit holder or contact staff member must not transport, arrange to transport, or permit the transport of, an enrolled child in the back of a motor vehicle of the kind known as a utility, station wagon or panel van, unless the back of the vehicle is enclosed and is fitted with appropriate seats and seat belts.

**Division 5 — Administration of care service**

**60. Enrolment form**

- (1) The licensee or permit holder must ensure that an enrolment form is kept for each child who attends the outside school hours care service.

- (2) The enrolment form must, as far as is practicable, include the following —
- (a) the full name, date of birth and address of the child;
  - (b) the full name of each parent;
  - (c) the residential address and telephone number of each parent;
  - (d) the address and telephone number of each parent's place of employment;
  - (e) the signature of a parent;
  - (f) the full name and telephone number of a person authorised by a parent to collect the child from the premises;
  - (g) the full name, address and telephone number of a person, other than a parent, who may be contacted in an emergency;
  - (h) a parent's written authorisation for medical attention to be sought for the child if required in an emergency;
  - (i) any written authorisation or permission referred to in regulation 93 or 94;
  - (j) details of any court order relating to —
    - (i) the long term responsibility for the welfare and development of the child;
    - (ii) the residence of the child; or
    - (iii) contact of a person with the child;
  - (k) relevant details of the child's medical history including current immunisation status and any allergies suffered by the child;
  - (l) any other relevant information relating to the child.

Penalty: \$1 500 and a daily penalty of \$100.

**61. Record of medication**

- (1) The licensee or permit holder must ensure that a record is kept of any medication administered to, or self-administered by, an enrolled child during a care session.
- Penalty: \$1 500 and a daily penalty of \$100.
- (2) A record of medication must include —
- (a) the name of the medication;
  - (b) the date and time of the administration of the medication;
  - (c) the quantity of medication administered;
  - (d) the name of the person who administered the medication; and
  - (e) except in an emergency, a parent's written authorisation for the administration of the medication and any instructions as to the administration of the medication.
- (3) This regulation does not apply to the self-administration of non-prescription asthma inhalers.

**62. Record of injury or accident**

The licensee or permit holder must ensure that a record is kept of —

- (a) any injury to or accident involving an enrolled child during a care session, including details of the nature and circumstances of the injury or accident;
- (b) any treatment given to an enrolled child who is injured or becomes ill during a care session; and
- (c) the death of an enrolled child during a care session, including details of the circumstances in which the child died.

Penalty: \$1 500 and a daily penalty of \$100.

**63. Other records**

- (1) The licensee or permit holder must ensure that a record of attendance is kept for each care session, including —
  - (a) the times of arrival and departure of each enrolled child; and
  - (b) the signature of the person responsible for verifying the accuracy of the record.
  
- (2) The licensee or permit holder must ensure that a record of each excursion is kept, including the following —
  - (a) the name of each enrolled child who participated in the excursion;
  - (b) for each of those children — the authorisation given by a parent of the child under regulation 80(1)(b)(i);
  - (c) the destination;
  - (d) the times of departure from and return to the premises;
  - (e) a copy of the written plan required by regulation 80(1)(a).
  
- (3) The licensee or permit holder must ensure that the following are kept —
  - (a) a record of each rehearsal of emergency procedures conducted in accordance with regulation 56(2);
  - (b) evidence of the qualifications of each contact staff member, including any qualifications in first aid, resuscitation, swimming or water rescue;
  - (c) the records required to be kept in relation to the employment of the contact staff members under industrial and revenue collection legislation;
  - (d) written particulars of the programme provided under regulation 78.

**64. Retaining and storing records**

- (1) The licensee or permit holder must ensure that a record required to be kept under regulation 60, 61, 62 or 63 is kept in an up-to-date form and in a safe and secure area on the premises.
- (2) The licensee or permit holder must ensure that —
  - (a) a record under regulation 62(a) or (b) concerning a child is retained until the child reaches the age of 24 years;
  - (b) a record under regulation 62(c) is retained for a period of 6 years from the day on which the record was made;
  - (c) a record under regulation 63(2) or 63(3)(d) is retained for 3 months; and
  - (d) a record under regulation 63(3)(a) is retained for a period of 2 years from the day on which the record was made.

Penalty: \$1 500 and a daily penalty of \$100.

**65. Confidentiality of records**

The licensee or permit holder must ensure that information recorded under regulation 60, 61, 62 or 63 is not directly or indirectly disclosed or communicated to another person except —

- (a) as required or permitted under the Act or any other written law; or
- (b) with the written authorisation of the person or, in the case of a child, the parent of the child, to whom the information relates.

Penalty: \$1 500 and a daily penalty of \$100.

**66. Falsification of records**

A person must not falsify a record kept under regulation 60, 61, 62 or 63.

Penalty: \$1 500.

**67. Visit from responsible parent**

The licensee or permit holder must permit a parent who is responsible at the time for the attendance of an enrolled child at the outside school hours care service to visit the child at the premises at any reasonable time.

**68. Insurance**

- (1) A licensee or permit holder must hold a current policy of insurance against the public liability of that person in respect of the provision of the outside school hours care service provided by the licensee or permit holder.
- (2) The insured amount must be adequate, in the opinion of the Director-General, to cover any potential liability of the licensee or permit holder in relation to the operation of the outside school hours care service.

**Division 6 — Mobile child care services**

**69. Application of regulations to mobile services**

- (1) If an outside school hours care service is not operated from fixed premises —
  - (a) the provisions of these regulations that relate only to fixed premises do not apply in relation to the operation of the service; and
  - (b) for the purpose of calculating the number and qualifications of the contact staff required to be on duty during a care session, Part 4 Division 4 (Excursions and sleepovers) applies instead of Part 4 Division 2.
- (2) Except as provided in subregulation (1), the licensee or permit holder must ensure that, as far as practicable, the operation and administration of the service comply with these regulations.

## **Part 4 — Operating the care service**

### **Division 1 — Number of enrolled children**

#### **70. Number of children — family day care**

- (1) The number of school age children being cared for during a care session by a school age family day care service, including any children of the licensee or permit holder who are of school age, is not to exceed the number specified in the licence or permit under section 17B(1) or (2) of the Act.
- (2) Subregulation (1) does not apply in relation to a school age child if —
  - (a) the child is adequately supervised by a person other than the licensee or permit holder; and
  - (b) the presence of the child does not detrimentally affect the best interests of the enrolled children.
- (3) A child who has not reached school age must not be present during a care session at a school age family day care service unless the child —
  - (a) is present on a temporary basis; and
  - (b) is adequately supervised by a person other than the licensee or permit holder.

*[Regulation 70 amended in Gazette 4 Jul 2003 p. 2691.]*

#### **71. Number of children at outside school hours care centre**

- (1) The number of children enrolled at an outside school hours care centre for a care session is not to exceed the number of children specified in the licence or permit under section 17B(1) or (2) of the Act.

- (2) A child who is not enrolled at an outside school hours care centre for a care session must not be present on the premises during the care session, or be present on an excursion with enrolled children during the care session, unless the child —
  - (a) is present on a temporary basis; and
  - (b) is adequately supervised by a person other than a member of the contact staff of the service.

**72. Care for children in exceptional circumstances**

Nothing in regulation 70 or 71 prevents the licensee or permit holder or a contact staff member from caring for a child contrary to those regulations if the circumstances are exceptional and all reasonable steps have been taken to have the child collected by a parent as soon as is practicable.

**Division 2 — Contact staff requirements**

**73. Staff requirements — school age family day care**

- (1) The licensee or permit holder must —
  - (a) be present on school age family day care premises during each care session; and
  - (b) if the children enrolled for the care session are taken on an excursion — accompany the children.
- (2) The licensee or permit holder must not provide the service unless the licensee or permit holder has current first aid qualifications.

Penalty: \$1 500 and a daily penalty of \$100.

**74. Staff requirements — single staff centres**

- (1) If the number of children specified in a licence or permit for an outside school hours care centre is not more than 10, at least one contact staff member must be on duty during each care session.

- (2) The contact staff member must be a person who —
  - (a) has reached the age of 21 years;
  - (b) is a qualified care giver; and
  - (c) has current first aid qualifications.

**75. Minimum contact staff — outside school hours care centres**

- (1) If the number of children specified in a licence or permit for an outside school hours care centre is more than 10, the contact staff requirements for a care session are calculated in accordance with this regulation.
- (2) Where the number of children enrolled for a care session falls within the range specified in the first column of an item in Schedule 1, Table 1, the number of contact staff on duty at the premises during the care session must —
  - (a) be at least the number specified in the second column of the item;
  - (b) include at least the number of qualified care givers and first aid officers specified in the third and fourth columns of the item respectively; and
  - (c) include at least the number of contact staff members specified in the fifth, sixth or seventh column of the item who have reached the age specified in the respective column.
- (3) If the number of enrolled children exceeds 143, the number of contact staff members required to be on duty at the premises is worked out by applying this regulation to the remainder and adding the resulting number of contact staff members to the number obtained by the previous application of this regulation.

**76. Contact staff reduction during short periods**

- (1) Despite regulation 75, the number of contact staff members on duty at the premises during a care session may be reduced

during periods of time before or after school on a school day if —

- (a) the combined duration of the periods does not exceed one hour;
  - (b) at least one contact staff member who has reached the age of 18 years is on duty at the premises during the periods for each multiple of 10 enrolled children and any remainder of fewer than 10 enrolled children present at the premises;
  - (c) at least one of the contact staff members on duty at the premises has current first aid qualifications; and
  - (d) the contact staff members who are on duty at the premises adapt the activities of the children in a manner that ensures that the children's health and safety are not prejudiced by the reduction in the number of contact staff on duty at the premises.
- (2) Despite regulation 75, the number of contact staff members on duty at the premises during a care session may be reduced during periods of time (except the lunch period) during a day on which there is no school if —
- (a) the combined duration of the periods does not exceed 2 hours;
  - (b) at least one contact staff member who has reached the age of 18 years is on duty at the premises at all times during the periods for each multiple of 10 enrolled children and any remainder of fewer than 10 enrolled children present on the premises;
  - (c) at least one of the contact staff members on duty at the premises has current first aid qualifications; and
  - (d) the contact staff members who are on duty at the premises adapt the activities of the children in a manner that ensures that the children's health and safety is not prejudiced by the reduction in the number of contact staff members.

**77. Contact staff reduction during lunch periods**

- (1) Despite regulation 75, if 27 or more enrolled children are present at an outside school hours care centre during a lunch period, the number of contact staff members on duty at the premises during the lunch period may be reduced if at all times during the lunch period —
  - (a) the number of contact staff members on duty is at least the number specified in the second column of an item in Schedule 1, Table 2, relative to the number of contact staff required under regulation 75 to be on duty at the premises, as specified in the first column of the item;
  - (b) at least one of the contact staff members on duty has reached the age of 18 years and has current first aid qualifications; and
  - (c) the contact staff members on duty adapt the activities of the enrolled children in a manner that ensures the children's health and safety are not prejudiced by the variation permitted under paragraph (a).
- (2) If the number of contact staff members required under regulation 75 to be on duty at the premises exceeds 12, the number of contact staff members required to be on duty during a lunch break is worked out by applying this regulation to the remainder and adding the resulting number of staff to the number obtained under the previous application of this regulation.

**Division 3 — Programmes and behaviour management**

**78. Programmes**

- (1) A programme of activities must be provided during care sessions that —
  - (a) is developmentally appropriate for the enrolled children; and

- (b) meets the play, recreation and relaxation needs of the enrolled children.
- (2) Without limiting subregulation (1), the programme of activities must, as far as practicable —
- (a) be suited to each child's skills and interests;
  - (b) provide a balance of indoor and outdoor activities;
  - (c) provide a range of activities from which a child may choose;
  - (d) include —
    - (i) physical activities (for example, sport, climbing, ball games or gymnastics);
    - (ii) creative activities (for example, art and craft, music or sewing);
    - (iii) activities involving construction (for example, cubby building, woodwork or construction kits);
    - (iv) exploratory activities (for example, nature walks, science activities or sand or water activities);
    - (v) dramatic activities (for example, puppetry, dressing up and plays); and
    - (vi) cognitive play activities (for example, board games, computer activities or reading);
- and
- (e) provide for the cultural needs of each child.

**79. Managing the behaviour of children**

- (1) An enrolled child must be given positive guidance directed towards acceptable behaviour.
- (2) An enrolled child must not be subjected to any form of corporal punishment, punishment by solitary confinement, punishment by physical restraint or other demeaning, humiliating or frightening punishment.

- (3) An enrolled child must be protected from bullying, violence and harassment.

#### **Division 4 — Excursions and sleepovers**

##### **80. Excursions from premises**

- (1) Enrolled children must not be taken on an excursion from the premises unless —
- (a) the senior contact staff member has prepared an excursion plan in accordance with regulation 82;
  - (b) a parent of each child to be taken on the excursion has, after being advised of the nature, location and date of the excursion, and the proposed times of departure from and return to the premises —
    - (i) given authorisation for the child to be taken on that excursion; and
    - (ii) provided the licensee with contact details in the event of an emergency;
- and
- (c) the staff member in charge of the excursion has with him or her a list of all those children.
- (2) A parent's authorisation for the purposes of subregulation (1)(b)(i) must be signed by the parent and include the following information —
- (a) the date of the excursion;
  - (b) the destination;
  - (c) the proposed times of departure from and return to the premises.
- (3) Subregulation (1) does not apply to an outing that consists of a walk to and from a destination in the local area if a parent of each child on the outing has given permission for the child to go on that outing or on outings of that kind.

**81. First aid kit**

- (1) A fully equipped and properly maintained first aid kit containing at least the items listed in regulation 49 must be taken on all excursions from the premises.
- (2) The first aid kit kept on the premises under regulation 49(1) must not be taken off the premises for an excursion if any enrolled child remains on the premises during the period of the excursion.

**82. Excursion plans**

An excursion plan for the purposes of regulation 80 must be in writing and must include details of the following —

- (a) the nature, location and date of the excursion;
- (b) the proposed times of departure from and return to the premises;
- (c) transport and supervision arrangements for the excursion;
- (d) the programme of activities (including contingency plans for inclement weather);
- (e) safety measures and emergency plans;
- (f) in the case of an excursion involving a sleepover — the menu.

**83. Contact staff in charge of excursions and water activities**

The contact staff member in charge of an excursion from the premises or a water activity —

- (a) must be at least 21 years of age; and
- (b) is responsible for the supervision and management of the children taken on the excursion and of the other contact staff members and any volunteers accompanying the children.

**84. Routine excursions — staff numbers**

When a number of children enrolled for a care session at an outside school hours care service are taken on an excursion that does not involve challenging activities, the children must be accompanied and supervised by —

- (a) the contact staff members required for that number of children under regulation 73, 74 or 75; and
- (b) enough additional contact staff members or volunteers to ensure that there is at least one staff member or volunteer for each multiple of 10 children and for any remainder of fewer than 10.

**85. Sleepovers — staff numbers**

- (1) When a number of enrolled children are taken on an excursion involving a sleepover, or remain for a sleepover at the premises, the children must be directly supervised by —
  - (a) the contact staff members required for that number of children under regulation 73, 74 or 75;
  - (b) if only one contact staff member would be required under paragraph (a) — at least one other contact staff member or volunteer; and
  - (c) enough additional contact staff members or volunteers to ensure that there is at least one staff member or volunteer for each multiple of 10 children and for any remainder of fewer than 10.
- (2) The beds, mattresses or sleeping bags used by the children, contact staff members and volunteers during the sleepover must be arranged so that there is easy access to and from each of them and to each exit.
- (3) If an outside school hours care service routinely provides overnight care for enrolled children, subregulation (1)(b) and (c) do not apply to a routine overnight care session if the enrolled children sleep on the premises.

**86. Engaging in challenging activities on excursions**

- (1) Enrolled children must not be permitted to participate in challenging activities on an excursion unless the contact staff member in charge of the excursion has —
  - (a) ensured the activity is developmentally appropriate for the children;
  - (b) identified and anticipated any likely hazards and taken steps to minimise those hazards;
  - (c) ensured that the skills, experience and qualifications of any persons conducting or assisting in the activity are appropriate;
  - (d) ensured that all necessary safety equipment is available; and
  - (e) ensured that the children have received any necessary training before engaging in the activity.
- (2) The contact staff member in charge of the excursion must —
  - (a) ensure that safety standards set by the organisers of the challenging activity are appropriate;
  - (b) ensure that the children comply with those safety standards and wear any necessary safety equipment; and
  - (c) follow safe practices when engaging in a challenging activity or assisting children engaged in a challenging activity.

**87. Challenging activity excursions — staff numbers**

- (1) When a number of enrolled children are taken on an excursion from the premises that involves challenging activities, the children must be accompanied and supervised by —
  - (a) the contact staff members required for that number of children under regulation 73, 74 or 75;
  - (b) if only one contact staff member would be required under paragraph (a) — at least one other contact staff member or volunteer; and

- (c) enough additional contact staff members or volunteers to ensure that there is at least one staff member or volunteer for each multiple of 5 children and for any remainder of fewer than 5.
- (2) Enrolled children engaged in a challenging activity must be directly supervised at all times.

### **Division 5 — Water activities**

#### **88. Additional requirements for water activities**

If enrolled children are taken on an excursion from the premises to engage in water activities, the requirements of this Division are additional to the requirements of Division 4.

#### **89. Wading or paddling pools on premises**

- (1) Regulations 90, 91 and 92 do not apply to water activities in or near a wading or paddling pool on the premises.
- (2) A wading or paddling pool on the premises must be emptied and stored while not in use in such a manner that it cannot collect water.

#### **90. Swimming pools on school age family day care premises**

- (1) Regulations 91 and 92 do not apply to water activities in a swimming pool on school age family day care premises.
- (2) Enrolled children must not be permitted to use a swimming pool on school age family day care premises unless —
  - (a) the children are under the direct supervision of someone who has current first aid qualifications, including a resuscitation certificate obtained not more than 12 months previously; and
  - (b) a parent of each of those children has given written permission for the child to use the pool.

**91. Water activities generally**

- (1) The contact staff member in charge of supervising enrolled children engaged in a water activity —
  - (a) must be at least 21 years of age; and
  - (b) is responsible for the supervision and management of the children engaged in the activity and of the other contact staff members and any volunteers accompanying the children.
- (2) Enrolled children must not be permitted to enter or remain in any body of water unless —
  - (a) the contact staff member in charge of the proposed water activity has completed the Risk Assessment Form for Water Activities in Schedule 2 and has assessed the risk of the activity accordingly as low or medium, but not high; and
  - (b) the children are directly supervised by the contact staff members and qualified rescuers required under regulation 92.
- (3) Enrolled children must not be permitted to enter the sea unless —
  - (a) the area entered is a closed water environment where the water is still or slow moving; or
  - (b) the child enters the water in an area that is patrolled by SLSWA or the relevant local government and that is designated accordingly by flags or other signs.

**92. Water activities — contact staff required**

While a number of enrolled children are engaged in a low risk water activity, they must be directly supervised at all times by —

- (a) the contact staff members required for that number of children under regulation 73, 74 or 75;

- (b) if only one contact staff member would be required under paragraph (a) — at least one other contact staff member or volunteer;
  - (c) in the case of a low risk water activity — as many additional contact staff members or volunteers as are required to ensure that —
    - (i) there is at least one contact staff member or volunteer for each multiple of 10 children and for any remainder of fewer than 10 children; and
    - (ii) of the contact staff members and volunteers who are directly supervising the children, there is at least one who is a qualified rescuer for each multiple of 20 children and for any remainder of fewer than 20 children;
- and
- (d) in the case of a medium risk water activity — as many additional contact staff members or volunteers as are required to ensure that —
    - (i) there is at least one contact staff member or volunteer for each multiple of 5 children and for any remainder of fewer than 5 children; and
    - (ii) of the contact staff members and volunteers who are directly supervising the children, there is at least one who is a qualified rescuer for each multiple of 10 children and for any remainder of fewer than 10 children.

### **Division 6 — Safety and health of enrolled children**

#### **93. Protection of enrolled children leaving the premises**

- (1) An enrolled child must not be permitted to leave the premises during or at the end of a care session unless —
  - (a) the child is in the care of —
    - (i) the child's parent or a person authorised by the child's parent;

- (ii) the licensee, permit holder or responsible officer, or an adult employee of the outside school hours care service who is responsible for the child and who is authorised in writing by the parent to take the child from the premises; or
    - (iii) in the case of an emergency, when a person referred to in subparagraph (i) or (ii) is not available to take charge of the child, a person authorised by the licensee, permit holder or responsible officer, having due regard to the safety and welfare of the child;

or

  - (b) the child has written permission from the child's parent, or a person authorised by the child's parent, to leave the premises while not in the care of a person referred to in paragraph (a).
- (2) The Director-General must be notified as soon as practicable if an enrolled child leaves the premises in the circumstances referred to in subregulation (1)(a)(iii).

**94. Transport of enrolled children**

A contact staff member must not transport, or arrange to transport, an enrolled child in a motor vehicle without the written authorisation of a parent of the child.

**95. Illness or accident to enrolled child**

- (1) Except in an emergency, medication must not be administered to an enrolled child, nor self-administered by an enrolled child, without the written authority of a parent of the child specifying the name of the medication and the time, quantity and manner of administration of the medication.
- (2) Medication must not be self-administered by an enrolled child without the direct supervision of a contact staff member.

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- (3) Subregulation (2) does not apply to the self-administration of a non-prescription asthma inhaler.
- (4) The person in charge of the premises may exclude an enrolled child or other person from the premises if there are reasonable grounds for suspecting that the child or other person is suffering from a communicable disease or other condition that could adversely affect the health or safety of anyone on the premises.
- (5) When deciding whether to exclude from the premises a child or other person who is suspected of suffering from a communicable disease, the person in charge may have regard to the guidelines set out in the document entitled *Communicable Disease — Guidelines for Teachers, Local Authorities and Child Care Centres* and published by the department principally assisting the Minister in the administration of the *Health Act 1911*.
- (6) All reasonable measures must be taken to notify staff members, parents of enrolled children and visitors to the premises of an exclusion under subregulation (4).
- (7) For the purposes of excluding an enrolled child or other person from the premises under subregulation (4), the person in charge may —
- (a) refuse to admit the child or other person to the premises;
  - (b) in the case of an unaccompanied child or a child who is already on the premises — request a parent of the child to take the child from the premises as soon as practicable; or
  - (c) in the case of another person who is already on the premises — request the person to leave the premises immediately.
- (8) A parent of a child enrolled for a care session on any day must be notified on the same day of an illness or injury suffered by the child during the care session, or of the occurrence of an accident involving the child during the care session.

**96. Hygiene standards**

Contact staff members must observe and maintain reasonable standards of hygiene in the provision of the outside school hours care service.

**97. Alcohol and drugs**

- (1) If an enrolled child appears to be adversely affected by alcohol, drugs, or any other potentially deleterious substance, a contact staff member must call a parent of the child to collect the child from the outside school hours service as soon as practicable.
- (2) A contact staff member must not permit any other person who appears to be adversely affected by alcohol, drugs, or any other potentially deleterious substance to remain on the premises during a care session.
- (3) A contact staff member must not permit a person who is on the premises during a care session to —
  - (a) smoke a cigarette, cigar or pipe;
  - (b) consume alcohol;
  - (c) take drugs unlawfully or be in unlawful possession of drugs; or
  - (d) take or be in possession of any other potentially deleterious substance.

## Part 5 — Other matters

### 98. Exercise of discretion by Director-General

When the Director-General exercises a discretion under these regulations in relation to a licence or permit or an application for a licence or permit, he or she must have regard to the following —

- (a) the best interests, and any special needs, of the children for whom the outside school hours care service is to be provided under the licence or permit;
- (b) the goals and objectives which the applicant seeks to achieve by the provision of the outside school hours care service;
- (c) whether the goals and objectives are appropriate for the children for whom, and the locality in which, the outside school hours care service is proposed to be provided;
- (d) the needs of the locality in which the outside school hours care service is proposed to be provided;
- (e) the needs of the children for whom the outside school hours care service is proposed to be provided and the extent to which those needs are being met;
- (f) the desirability of or need for short-term, special, innovative, experimental, culturally appropriate, culturally specific outside school hours care services.

### 99. Proceedings before Director-General

- (1) In determining any application or matter under the Act or these regulations the Director-General —
  - (a) must act with as little formality as is practicable;
  - (b) is not bound by the rules of evidence but may inform himself or herself on any question that arises for decision in such manner as the Director-General thinks fit;

**r. 100**

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- (c) may conduct or arrange such hearings, meetings, consultations and negotiations as the Director-General thinks fit, at such times and places as the Director-General thinks fit; and
  - (d) may receive and consider such submissions as the Director-General thinks fit.
- (2) Subject to these regulations the Director-General may determine his or her own procedures.

**100. Licensing officers**

*[(1) repealed]*

- (2) The Director-General may appoint persons to be licensing officers for the purposes of section 17E(3) of the Act.

*[(3) repealed]*

- (4) A person who is an employee of the department whose function is the delivery of advice or support services in relation to outside school hours care services is not to be appointed as a licensing officer.
- (5) The Director-General must issue to each licensing officer a certificate of the person's appointment as a licensing officer.
- (6) A licensing officer is not authorised to carry out the functions of a licensing officer under section 17E of the Act in relation to an outside school hours care service unless the licensing officer shows his or her certificate of appointment to the person in charge of the premises.
- (7) In proceedings under these regulations, a certificate of appointment is prima facie evidence of the appointment of the person identified in the certificate as a licensing officer.

*[Regulation 100 amended in Gazette 25 Nov 2003 p. 4760.]*

**101. Review of operation of regulations**

The Minister is to arrange for a review of the operation of these regulations, involving broad community consultation, to be carried out at 3 year intervals, beginning at the end of 3 years after the commencement of these regulations.

## **Part 6 — Transitional provisions and consequential amendments**

### **102. Transitional**

- (1) This regulation applies to a person who was, immediately before these regulations came into operation, providing a child care service outside school hours for school age children.
- (2) If the person —
  - (a) applies to the Director-General for registration as an outside school hours care provider within 3 months after the day on which these regulations come into operation; and
  - (b) applies for a licence or permit in relation to the service within 2 years after that day,

then, subject to subregulation (4), the person may continue to operate the service, as if these regulations had not come into operation, until the Director-General issues or refuses to issue a licence or permit to the person.

- (3) An application for registration under subregulation (2) must —
  - (a) be in a form approved by the Director-General;
  - (b) give the applicant's full name, age and postal address;
  - (c) if the applicant is not in charge of the day-to-day operation of the service — give the name, age, and postal address of the person in charge;
  - (d) give the address of the premises at which the service is being provided;
  - (e) indicate the type of child care service provided by the applicant; and
  - (f) indicate the number of children for whom the child care service is provided.

- (4) Until the Director-General issues or refuses to issue the licence or permit to the provider —
- (a) the Director-General may exercise any of his or her powers under these regulations in relation to the service as if the licence or permit had been issued; and
  - (b) these regulations apply as far as practicable to the operation of the service.

*[103. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

**Schedule 1 — Contact staff requirements**

[r. 75 and 77]

**Table 1**

No. of children	Minimum contact staff (routine periods)					
	No. of contact staff	No. of qualified care givers	No. of first aid officers	No. of contact staff who have reached the age of —		
				21	18	16
1-26	2	1	1	1	1	0
27-39	3	1	1	1	1	1
40-52	4	2	2	2	1	1
53-65	5	2	2	2	2	1
66-78	6	2	2	3	2	1
79-91	7	3	3	4	2	1
92-104	8	3	3	4	3	1
105-117	9	3	3	4	3	2
118-130	10	4	4	5	3	2
131-143	11	4	4	5	4	2

**Table 2**

Minimum contact staff (lunch periods)	
Minimum number of contact staff required under regulation 75	Minimum number of contact staff permitted during a lunch period
3	2
4	3
5	3
6	4
7	4
8	5
9	5
10	6
11	6
12	7

## Schedule 2 — Risk Assessment Form for Water Activities

[r. 91(2)]

Risk assessment factor	Points
<b>1. Children’s swimming ability</b>	
(a) unknown .....	10
(b) mixed swimming ability .....	3
(c) certificate up to level 5, issued by the Royal Life Saving Society or Department of Education	2
(d) certificate level 6 or higher, issued by the Royal Life Saving Society or Department of Education	1
<b>2. Number of people using the venue</b>	
(a) up to 50 .....	1
(b) 51 to 100 .....	2
(c) more than 100 .....	3
<b>3. Water visibility</b>	
(a) bottom is clearly visible .....	0
(b) bottom is not visible .....	2
<b>4. Water movement</b>	
(a) no water movement .....	0
(b) slight water movement (up to 0.5 m swell) .....	1
(c) moderate water movement (more than 0.5 m to 1 m swell) .....	3
(d) high water movement (more than 1 m swell) .....	5
<b>5. Wind speed</b>	
(a) calm to light breeze (up to 6 knots) .....	1
(b) gentle to moderate breeze (more than 6 knots to 16 knots) .....	2
(c) fresh to strong breeze (more than 16 knots to 24 knots) .....	5
(d) strong wind warning (more than 24 knots) .....	15
<b>6. Swimming area</b>	
(a) purpose built .....	1

<b>Risk assessment factor</b>	<b>Points</b>
(b) natural, with change rooms, toilets, telephone and similar infrastructure .....	2
(c) natural, with no change rooms, toilets, telephone or similar infrastructure .....	3
<b>7. Lifesaving facilities</b>	
(a) available .....	0
(b) not available .....	1
<b>8. Signs or other evidence of danger or health risk</b>	
Including "No swimming sign", rips, algal bloom, amoebic meningitis risk, boating activity and dangerous marine life .....	16

**Record your score here** \_\_\_\_\_

**Low risk**            **0 to 10 points**  
**Medium risk**      **11 to 15 points**  
**High risk**           **16 points or more**

**Notes**

<sup>1</sup> This is a compilation of the *Community Services (Outside School Hours Care) Regulations 2002* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Community Services (Outside School Hours Care) Regulations 2002</i>	28 Aug 2002 p. 4367-440	28 Aug 2003 (see r. 2)
<i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 7</i>	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Community Services (Outside School Hours Care) Amendment Regulations 2003</i>	4 Jul 2003 p. 2690-1	4 Jul 2003
<i>Community Services (Outside School Hours Care) Amendment Regulations (No. 2) 2003</i>	25 Nov 2003 p. 4759-60	25 Nov 2003

**Reprint 1: The *Community Services (Outside School Hours Care) Regulations 2002* as at 20 Aug 2004** (includes amendments listed above)

**These regulations were repealed by the *Children and Community Services Act 2004* s. 250(2)(c) as at 1 Mar 2006 (see *Gazette* 14 Feb 2006 p. 695)**

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<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnote referred to in the table.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Children and Community Services Act 2004</i> s. 250(2)(c) <sup>2</sup>	34 of 2004	20 Oct 2004	To be proclaimed (see s. 2)

<sup>2</sup> On the date as at which this compilation was prepared, the *Children and Community Services Act 2004* s. 250(2)(c) had not come into operation. It reads as follows:

“

**250. Repeal, transitional and savings provisions**

(2) The following regulations are repealed —

- .....
- (c) the *Community Services (Outside School Hours Care) Regulations 2002*;

”.

## 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>
care session .....	3
challenging activity .....	3
contact staff member .....	3
convicted person .....	3
criminal record check .....	3
current criminal record check .....	3
department .....	3
enrolled child .....	3
first aid qualifications .....	3
fit and proper person .....	3, 7
licence .....	3
licensee .....	3
licensing officer .....	3
low risk water activity .....	3
lunch period .....	3
medium risk water activity .....	3
on duty .....	3, 5(1)
outside school hours care centre .....	3
outside school hours care centre licence .....	3
outside school hours care centre permit .....	3
outside school hours care service .....	3
parent .....	3
permit .....	3
premises .....	3
prescribed offence .....	3
qualified care giver .....	3
qualified rescuer .....	3, 6(1), 6(2), 6(3), 6(4)
responsible officer .....	3
RLSSA .....	3
school age .....	3, 4(1)
school age family day care .....	3
school age family day care licence .....	3
school age family day care permit .....	3
secondary programme .....	3
senior contact staff member .....	3
SLSWA .....	3
volunteer .....	3
water activity .....	3
working day .....	3



