

WESTERN AUSTRALIA

ACTS AMENDMENT (CHILD CARE SERVICES) ACT

No. 105 of 1987

AN ACT to amend the *Community Services Act 1972* to provide for the regulation of child care services and to repeal sections 118A and 119 of the *Child Welfare Act 1947*.

[Assented to 16 December 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Child Care Services) Act 1987*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

PART II—COMMUNITY SERVICES ACT 1972**Principal Act**

3. In this Part the *Community Services Act 1972** is referred to as the principal Act.

[*Reprinted as approved 15 October 1986.]

Section 3 amended

4. Section 3 of the principal Act is amended—

(a) by inserting before the definition of “delegate” the following definition—

“ “child care service” means a service for the casual or day to day care of a child or children of pre-school age, or such other age as may from time to time be prescribed, and includes—

- (a) care provided daily or for certain days each week;
- (b) occasional, casual or part time care;
- (c) family day care, that is to say care provided to a child in a private dwelling in a family or domestic environment; and
- (d) care provided as an ancillary service to a commercial or recreational activity,

but excludes—

- (aa) care provided to a child by a guardian, custodian, person having lawful access (whether by common law, written law or court order) or relative of the child;

- (bb) care provided in circumstances where a person of a description referred to in paragraph (aa) is present in or in close proximity to the part of the premises used for the provision of the service;
 - (cc) care provided to a child in the premises where the child resides or substantially in those premises but including outings during which the child is in the care of the person providing the service;
 - (dd) a service provided to a child unless the service is provided—
 - (i) in return for payment or reward, either direct or indirect through payment or reward for some other service; or
 - (ii) as a benefit of employment;
 - (ee) care of a kind required to be licensed under section 111 of the *Child Welfare Act 1947*;
 - (ff) care of a kind required to be authorized by permit under Part VIA of the *Education Act 1928*; and
 - (gg) care prescribed for the purposes of this definition; ”; and
- (b) by deleting the full stop after the definition of “Director-General”, substituting a semi-colon and inserting the following definitions—

“ “pre-school age” in relation to a child, means an age below the minimum age for admission to year 1 of a Government primary school;

“relative” in relation to a child, means—

- (a) mother, father, stepfather, stepmother, brother, sister, aunt, uncle, first cousin or grandparent of the child whether the relationship is of the whole blood or half blood or by affinity or established by the *Artificial Conception Act 1985*, and notwithstanding that the relationship is traced through, or to, a person whose parents were not married to each other at the time of the child’s birth or subsequently, or depends upon the adoption of any person; and

- (b) in relation to a child of Aboriginal descent, includes a person regarded under Aboriginal customary law as an equivalent relative in relation to the child as a person mentioned in paragraph (a). ”.

Sections 17A to 17F inserted

5. After section 17 of the principal Act, the following sections are inserted—

Provision of child care service

“ 17A. (1) A person shall not provide a child care service nor use or keep any premises for the provision of a child care service except under and in accordance with a licence or a permit issued under this Act.

(2) A person shall not use or keep any premises for the provision of a child care service unless those premises are under the effective supervision of the person who holds a licence or permit under this Act authorizing the provision of a child care service on those premises.

(3) A person shall not in any manner represent or imply that that person provides a child care service or uses or keeps premises for the purpose of providing a child care service except in a manner consistent with a licence or permit issued in respect of that service and those premises to that person under this Act.

Penalty: (a) In the case of a first offence under this section, \$2 000 and a daily penalty of \$200; and

(b) in the case of a subsequent offence under this section, \$4 000 and a daily penalty of \$400 or imprisonment for 6 months, or both a fine and imprisonment.

Director-General may issue licences and permits

17B. (1) The Director-General may issue a licence to a person authorizing the provision of a child care service by that person in respect of a number of children specified in the licence on premises specified in the licence for a period of 2 years.

(2) The Director-General may issue a permit to a person authorizing, subject to any conditions that may be specified in the permit, the provision of a child care service by that person in

respect of a number of children specified in the permit on premises specified in the permit for a period specified in the permit not exceeding 1 year.

(3) Where an application for a licence or permit is made in accordance with the regulations, the Director-General shall issue a licence or a permit to the applicant if the Director-General is satisfied—

- (a) that the applicant is a fit and proper person to hold a licence or permit, or in the case of an application by a body corporate, department of the public service or a public authority, that the officer of that body, department or authority who is likely to be directly responsible for the effective supervision of the child care service is a fit and proper person to be so responsible; and
- (b) that the applicant is capable of providing a child care service in accordance with the regulations or, in the case of a permit, in accordance with the terms of the permit.

(4) The Director-General may amend a licence or a permit as to the number of children or the premises specified in the licence or permit.

(5) The Director-General may renew a licence and may accept the surrender of a licence or permit.

(6) The Director-General may cancel or suspend a licence or permit if the Director-General—

- (a) ceases to be satisfied that the holder of the licence or permit is qualified to be issued with a licence or permit in terms of subsection (3) (a) and (b); or
- (b) is satisfied that the holder of the licence or permit has persistently failed to comply with the regulations or in case of a permit with any condition specified in the permit.

Appeals to Local Court

17C. (1) Where the Director-General—

- (a) refuses an application for a licence or permit or for the renewal of a licence;
- (b) issues a permit subject to a condition to which the applicant objects;

- (c) refuses to approve an officer of a body corporate, department of the public service or public authority for the purposes of section 17B (3) (a); or
- (d) cancels or suspends a licence or a permit,

the applicant or, in a case to which paragraph (c) applies, the officer, may appeal to the Local Court against the decision of the Director-General within 30 days after the day on which the applicant or officer receives notice of the decision or within such further time as the Local Court may in a particular case allow.

(2) Where the Director-General does not, within 30 days of an application being lodged for a licence or permit or the renewal of a licence either issue a licence or a permit, renew the licence or refuse the application, notice of a refusal of the application shall for the purposes of subsection (1) be deemed to have been given to the applicant on the expiration of that period of 30 days.

(3) A Local Court to which an appeal is made under subsection (1) has jurisdiction to hear and determine the appeal and the appeal shall—

- (a) be brought and the proceedings conducted in such manner as may be prescribed by the rules of court in relation to appeals from the decisions of a tribunal, or if in relation to any matter no such rule of court is applicable, in such manner as may be directed by the court; and
- (b) unless the court otherwise orders, be in the nature of a rehearing.

(4) A Local Court hearing an appeal under this section may—

- (a) confirm, quash, or vary the decision appealed from;
- (b) remit the matter to the Director-General for reconsideration, with or without directions;
- (c) make such other order, including an order as to costs, as the court thinks fit,

and effect shall be given to an order made under this subsection.

Power to exempt

17D. (1) The Minister may by order published in the *Gazette* exempt from the application of section 17A or the provisions of the regulations or certain of those regulations a specified child care service or a child care service of a specified kind or description.

(2) The Minister may by order published in the *Gazette* vary or cancel an order made under subsection (1).

(3) In the exercise of the powers conferred by subsections (1) and (2), the Minister shall have regard to—

- (a) the best interests of the children for whom the child care service is proposed to be provided and any special needs or interests of those children;
- (b) the views of parents and guardians of children for whom the service is intended;
- (c) the needs of the locality in which a child care service is proposed or the children for whom the child care service is proposed and the extent to which those needs are being met; and
- (d) the desirability of or need for short-term, special, innovative, experimental, culturally appropriate, culturally specific child care services.

(4) The Minister may by written instrument delegate all or any of his powers under this section to the Director-General and any power so delegated may be further delegated by the Director-General in accordance with section 20.

Power to enter and inspect premises

17E. (1) A licensing officer may—

- (a) enter at any reasonable time any premises specified in a licence or permit issued under this Act as premises on which a child care service may be provided and inspect those premises and any equipment or other thing on those premises;
- (b) require any person who is on premises entered in accordance with this section to provide any information that is necessary to ascertain whether the regulations have been or are being complied with;
- (c) inspect and for that purpose require the production of, any register, record or other document that any person is required by the regulations to keep and copy or take extracts from any such register, record or other document.

(2) Where a justice is satisfied that there are reasonable grounds for suspecting that a child care service is being provided on premises other than premises on which such a service may be

lawfully provided under a licence or a permit, the justice may issue a warrant authorizing a licensing officer to enter and inspect those premises.

(3) In this section, “licensing officer” means a person who is appointed as a licensing officer under the regulations.

Application to Government and public authorities

17F. Sections 17A to 17E bind the Crown in right of the State and every public authority established by or under a law of the State. ”.

Section 19 amended

6. Section 19 of the principal Act is amended—

- (a) by inserting after the section designation “19.” the subsection designation “(1)”; and
- (b) by inserting the following subsection—

“ (2) A complaint for an offence against any provision of this Act may be laid in the name of the Director-General by any officer of the Department authorized for the purposes of this section by the Director-General and any prosecution instituted in the name of the Director-General shall, in the absence of evidence to the contrary, be taken to have been instituted by his authority.

(3) An officer of the Department authorized for the purposes of this section by the Director-General may appear on behalf of the Director-General in any proceedings in any court for an offence against this Act. ”.

Section 20 amended

7. Section 20 of the principal Act is amended in subsection (6) by deleting “\$200” and substituting the following—

“ \$2 000 ”.

Section 21 amended

8. Section 21 of the principal Act is amended in subsection (1) by deleting “\$200” and substituting the following—

“ \$2 000 ”.

Section 25 amended

9. Section 25 of the principal Act is amended—

(a) by deleting “not inconsistent with this Act” and substituting the following—

“ prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act and without prejudice to the generality of the preceding provision regulations may make provision ”;

(b) deleting paragraph (e) and substituting the following paragraphs—

(e) regulating applications for licences and permits in respect of child care services, the assessment of applicants, objections, the issue of licences and permits, the renewal of licences and the cancellation, suspension or surrender of licences and permits;

(f) providing for the appointment, powers and duties of licensing officers;

(g) establishing a mechanism for the review of regulations relating to child care services;

(h) regulating the staffing requirements for the provision of child care services;

(i) regulating the building and other physical environment requirements for the provision of child care services;

(j) prescribing requirements as to the health and safety of children during the provision of child care services;

(k) regulating programmes of activities and equipment to be provided for child care services;

(l) regulating the administration of child care services, the records to be maintained and the returns to be made;

- (m) empowering the Director-General to give directions generally or in particular cases to the holders of licences and permits as to the provision of child care services and in special circumstances in particular cases to exempt in writing holders of licences and permits from compliance with specified regulations for a period of time specified in the exemption;
 - (n) providing for fees to be paid;
 - (o) providing that contravention of a regulation constitutes an offence and providing for penalties not exceeding a fine of \$1 500 and a daily penalty of \$100;
 - (p) prescribing provisions of a savings or transitional nature consequential upon the making of regulations regulating the staffing requirements or the building or other physical environment requirements for the provision of child care services. ”; and
- (c) by deleting “and any such regulations may confer upon a specified person or body discretionary powers and authorities.”.

Transitional

10. Upon the coming into operation of this Act, a licence or a permit granted by the Director-General under section 118A of the *Child Welfare Act 1947* shall be deemed for the purposes of the *Community Services Act 1972* (as amended by this Act) to have been issued, subject to any necessary modifications, under section 17B of the *Community Services Act 1972* and shall, unless sooner surrendered, suspended or cancelled, continue to have effect until it expires in accordance with its terms.

PART III—AMENDMENT OF *CHILD WELFARE ACT 1947*

Principal Act

11. In this Part the *Child Welfare Act 1947** is referred to as the principal Act.

[*Reprinted as approved 30 August 1984 and amended by Acts Nos. 87 of 1982, 52, 61 and 121 of 1984 and 74 and 98 of 1985.]

Repeal of sections 118A and 119

12. Sections 118A and 119 of the principal Act are repealed.

Section 149 amended

13. Section 149 of the principal Act is amended in paragraph (f) of subsection (1) by deleting “or one hundred and eighteen A of this Act”.
