

Western Australia

Child Care Services Amendment Act 2011

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No. 38 of 2011

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Child Care Services Amendment Act 2011

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Western Australia

Child Care Services Amendment Act 2011

No. 38 of 2011

An Act to amend the *Child Care Services Act 2007* and to consequentially amend the *Working with Children (Criminal Record Checking) Act 2004*.

[Assented to 4 October 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Child Care Services Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

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

Part 2 — *Child Care Services Act 2007* amended

3. Act amended

This Part amends the *Child Care Services Act 2007*.

4. Section 3 amended

- (1) In section 3 delete the definitions of:

applicant

application

assessment notice

corporate applicant

equivalent authority

interim negative notice

licensing officer

managerial officer

negative notice

nominated supervising officer

prescribed offence

supervising officer

- (2) In section 3 insert in alphabetical order:

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

approved means approved by the CEO;

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

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

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

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

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

licence applicant means —

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

licence application means an application under section 10;

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

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

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

or

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

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

prescribed means prescribed by regulations made under section 52;

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

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

relevant record means a record or document that —

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

renewal applicant means a person who makes a renewal application;

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

supervising officer has the meaning given in section 5A;

(3) In section 3 in the definition of **criminal record check**:

(a) after “issued by” insert:

the Police Force of Western Australia,

(b) delete “sets out the” and insert:

sets out, or summarises in a manner acceptable to the CEO, the

s. 5

- (4) In section 3 in the definition of *family day care service*:
- (a) after “provided” (first occurrence) insert:
- by an individual
- (b) in paragraph (a) delete “person” and insert:
- individual
- (5) In section 3 in the definition of *individual applicant* delete “an applicant” and insert:
- a licence applicant
- (6) In section 3 in the definition of *usual occupant*:
- (a) delete “an application” and insert:
- a licence application
- (b) in paragraph (a) before “applicant” insert:
- licence

5. Section 5A inserted

After section 4 insert:

5A. Term used: supervising officer

- (1) For the purposes of this Act, the *supervising officer* for a child care service at a particular time is —
- (a) if the licensee for the service is an individual —
- (i) the licensee; or

(ii) another individual who is approved by the CEO, in accordance with the regulations, to act in place of the licensee at that time;

or

(b) if the licensee for the service is a body corporate or public authority, an individual who is —

(i) approved by the CEO, in accordance with the regulations, as a person suitable to have responsibility for the day-to-day supervision and control of the service; and

(ii) nominated by the licensee, in accordance with the regulations, as the supervising officer for the service at that time.

(2) Regulations made for the purposes of subsection (1)(b)(ii) must not allow a licensee for a child care service to nominate 2 or more individuals as the supervising officer for the service at the same time.

6. Part 2 Division 2 heading amended

In the heading to Part 2 Division 2 delete “**Application**” and insert:

Licence application

s. 7

7. Section 11 amended

In section 11:

- (a) delete “An” and insert:

A licence

- (b) delete paragraph (a) and insert:

- (a) in the approved form; and

8. Section 12 amended

- (1) In section 12(1):

- (a) delete “an applicant” and insert:

a licence applicant

- (b) before “application.” insert:

licence

- (2) Delete section 12(2) and insert:

- (2) Without limiting subsection (1), for the purpose of deciding whether or not an individual applicant is a fit and proper person to provide the child care service to which the licence application relates, the CEO may ask the applicant to do one or more of the following —

- (a) undergo an oral or written assessment as to his or her knowledge and understanding of —
- (i) the operation of this Act; and
 - (ii) the field of child development;

- (b) provide a reference or report specified by the CEO;
- (c) provide evidence that the applicant holds qualifications prescribed in relation to the type of child care service to which the licence application relates;
- (d) undergo a medical, psychiatric or psychological test or examination specified by the CEO.

(3) In section 12(3) before “application” insert:

licence

(4) In section 12(4) before “applicant” insert:

licence

Note: The heading to amended section 12 is to read:

Further information relevant to licence application

9. Section 14 amended

(1) In section 14(1) before “application” insert:

licence

(2) Delete section 14(2) and insert:

- (2) The CEO must not grant a licence if the licence applicant is disqualified under section 29(4)(e)(i) or 30C(4)(d)(i) from holding a licence.

s. 10

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

10. Sections 15, 16 and 17 replaced

Delete sections 15, 16 and 17 and insert:

15. Additional restrictions on grant of licence to individual applicant

- (1) The CEO must not grant a licence to an individual applicant if the applicant is disqualified —
 - (a) under section 29(4)(e)(ii) or 30C(4)(d)(ii) from being a managerial officer of a corporate licensee; or
 - (b) under section 29(4)(e)(iii) or 30C(4)(d)(iii) from being the supervising officer for a child care service.
- (2) The CEO must not grant a licence to an individual applicant unless the CEO is satisfied that —
 - (a) the applicant has the ability to supervise and control on a day-to-day basis the provision of

- the child care service to which the licence application relates (the *relevant service*); and
- (b) is otherwise a fit and proper person to provide the relevant service; and
- (c) if the relevant service is a family day care service — each usual occupant is a fit and proper person to associate with children.

16. Additional restrictions on grant of licence to corporate applicant

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

11. Section 21 amended

- (1) In section 21(1):
 - (a) in paragraph (b) delete “25; or” and insert:

25 or 29; or
 - (b) in paragraph (c) delete “29; or” and insert:

29 or 30B; or

s. 12

- (2) In section 21(2) delete “The” and insert:

Unless it is extended under subsection (3), the

- (3) After section 21(2) insert:

- (3) If an application for another licence is made in respect of the place to which a licence document applies, the CEO may extend the period specified in the licence document so that the existing licence continues to have effect until the application is determined.

12. Section 22 amended

- (1) In section 22(2):

- (a) delete “An application for renewal” and insert:

A renewal application

- (b) delete paragraph (a) and insert:

- (a) in the approved form; and

- (2) Delete section 22(3) and insert:

- (3) If a renewal application is made in accordance with subsection (2) the licence continues to have effect until the renewal application is determined unless the licence is suspended under section 25 or 29 or cancelled under section 29 or 30B.

- (3) Delete section 22(4).

13. Section 23A inserted

After section 22 insert:

23A. Further information relevant to renewal application

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

14. Section 23 amended

In section 23:

- (a) in paragraph (a) delete “14(2), 15, 16 or 17” and insert:

14(3), 15(2) or 16(2)

- (b) in paragraph (b) delete “the regulations or a term or condition of the licence; or” and insert:

this Act; or

- (c) in paragraph (c) before “application” insert:

renewal

15. Part 2 Division 6 heading replaced

Delete the heading to Part 2 Division 6 and insert:

Division 6 — Disciplinary matters

16. Section 25 replaced

Delete section 25 and insert:

25. Suspension of licence on ground of unacceptable risk

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

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

17. Section 26 deleted

Delete section 26.

18. Section 27 replaced

Delete section 27 and insert:

27. Revocation of suspension

- (1) Unless subsection (2) applies, the CEO may, by written notice given to the licensee, revoke the suspension of a licence under section 25 if the CEO —
 - (a) is satisfied that measures specified in the suspension notice under section 25(3)(e) have been taken; or
 - (b) is otherwise satisfied that it is appropriate to do so in the circumstances of the particular case.
- (2) The CEO cannot take action under subsection (1) if the CEO has made an allegation under section 25(4) in relation to the matter giving rise to the suspension.

19. Section 28 amended

In section 28:

- (a) in paragraph (a) after “revoked” insert:

by the CEO
- (b) after paragraph (a) insert:
 - (ba) the suspension is revoked by the State Administrative Tribunal under section 25(6) or on an application under section 30 for a review of the CEO’s decision to suspend the licence;

(c) in paragraph (b) after “29” insert:

or 30B

20. Section 29 replaced

Delete section 29 and insert:

29. Disciplinary action against licensee

- (1) In this section —
specified means specified in an order under subsection (4).
- (2) Grounds for disciplinary action against a licensee exist if —
 - (a) the licensee has improperly obtained a licence; or
 - (b) the licensee has contravened this Act; or
 - (c) the CEO is no longer satisfied as to a matter referred to in section 14(3), 15(2) or 16(2) that was relevant to the decision to grant a licence to the licensee; or
 - (d) the licensee has contravened the *Working with Children (Criminal Record Checking) Act 2004* section 22; or
 - (e) there are reasonable grounds for believing that the continued provision of the child care service to which a licence held by the licensee relates would constitute an unacceptable risk to the wellbeing of the children for whom the service is provided.
- (3) If the CEO considers that grounds for disciplinary action against a licensee exist, the CEO may make an

allegation to the State Administrative Tribunal in respect of that person.

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

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

30A. Limitation on section 29(4)(d)

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

30B. Cancellation of licence if child care service no longer provided

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

30C. Disciplinary action against managerial officer

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

- (c) subject to subsection (5), an order requiring the person to pay a penalty not exceeding \$2 500;
 - (d) an order disqualifying the person from one or more of the following —
 - (i) holding a licence;
 - (ii) being a managerial officer of a corporate licensee;
 - (iii) being the supervising officer for a child care service,permanently, for a specified period or until a further order is made by the Tribunal.
- (5) The State Administrative Tribunal is not to make an order under subsection (4)(c) unless the Tribunal is satisfied that grounds for disciplinary action exist under subsection (2)(a).
- (6) The State Administrative Tribunal may make an order under subsection (4)(a), (b)(ii), (c) or (d) in respect of a person whether or not at the time when the order is made the person is a managerial officer of a corporate licensee.

30D. Offence to employ managerial officer who is disqualified

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

Penalty: a fine of \$60 000.

21. Section 30 amended

In section 30(1) in the definition of *licensing decision* paragraph (e) after “amend” insert:

or refuse to amend

22. Section 32 amended

After section 32(3) insert:

- (4) An amendment application must be —
 - (a) in the approved form; and
 - (b) accompanied by the prescribed fee (if any).
- (5) The CEO may ask a licensee making an amendment application for any additional document or information that the CEO considers is or could be relevant to making a decision on the amendment application.
- (6) If the CEO makes a request under subsection (5), the CEO does not have to consider the amendment application, or consider it further, until the request is complied with.
- (7) Any costs incurred in complying with a request under subsection (5) are to be paid by the licensee making the amendment application unless the CEO determines otherwise.

23. Section 38 amended

- (1) In section 38(1) insert in alphabetical order:

Commonwealth agency means —

- (a) a department of the Public Service of the Commonwealth; or

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

(2) In section 38(2) and (3) after “public authority,” insert:

a Commonwealth agency,

(3) In section 38(4) delete “law of this State” and insert:

written law

(4) After section 38(5) insert:

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

24. Section 40 amended

(1) In section 40(1) delete “appoint” and insert:

designate

(2) In section 40(2) delete “a form approved by the CEO.” and insert:

the approved form.

(3) Delete section 40(3) and insert:

(3) A licensing officer must —

- (a) carry his or her identity card when performing functions under this Act; and
- (b) if it is practicable to do so, produce his or her identity card before exercising a power under this Act.

(4) In section 40(4) delete “appointment” and insert:

designation

25. Section 41A inserted

After section 40 insert:

41A. Functions of licensing officer

The functions of a licensing officer are as follows —

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

- (f) any other functions that are prescribed.

26. Part 4 replaced

Delete Part 4 and insert:

Part 4 — Compliance and enforcement

Division 1 — General powers

42. Power to enter place

- (1) In this section —
exempt service means a child care service to which an order under section 45(1) applies.
- (2) A licensing officer, for compliance purposes, may enter a place if —
 - (a) it is a place at which a child care service is provided under a licence and the entry occurs during the service's usual hours of operation; or
 - (b) it is a place at which an exempt service is provided and the entry occurs during the service's usual hours of operation; or
 - (c) it is a place at which children attending a child care service are present for the purposes of an excursion; or
 - (d) its occupier gives informed consent to the entry; or
 - (e) the entry is authorised by an entry warrant.

- (3) For the purposes of subsection (2)(d), an occupier gives informed consent if the occupier gives consent after being informed by the licensing officer —
- (a) of the powers the officer wants to exercise in respect of the place; and
 - (b) of the reasons why the officer wants to exercise those powers; and
 - (c) that the occupier can refuse to consent to the officer entering the place.

43A. Powers after entering place

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

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

43B. Obtaining information, records and documents

- (1) A licensing officer, for compliance purposes, may do any of the following —
 - (a) direct a person —
 - (i) to give such information as is required;
or
 - (ii) to answer a question put to the person,
in relation to any matter;
 - (b) direct a person to produce a record or document that is in the person's possession or under the person's control;
 - (c) make a copy of a record or document produced in response to a direction under paragraph (b).
- (2) A direction under subsection (1)(a) —
 - (a) must specify the time at or within which the information or answer is to be given; and
 - (b) may require that the information or answer —
 - (i) be given orally or in writing; and
 - (ii) be given at, or sent or delivered to, a place specified in the direction; and
 - (iii) in the case of written information or a written answer, be sent or delivered by any means specified in the direction;
and
 - (iv) be given on oath or affirmation or verified by statutory declaration.
- (3) A direction under subsection (1)(b) —
 - (a) must specify the time at or within which the record or document is to be produced; and

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

43C. Additional powers in relation to relevant records

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

- (a) operate a computer or other thing on which the officer suspects on reasonable grounds a relevant record is or may be stored or direct a person who has the custody or control of the computer or thing to do so;
- (b) direct a person who is or appears to be in control of a record or document that the officer suspects on reasonable grounds is a relevant

record to give the officer a translation, code, password or other information necessary to gain access to or interpret and understand the record or document;

- (c) make a copy of or take an extract from, or download or print out, or photograph or film, a record or document that the officer suspects on reasonable grounds is a relevant record;
- (d) seize a record or document that the officer suspects on reasonable grounds is a relevant record and retain it for as long as is necessary for the purposes of this Act;
- (e) seize a computer or other thing on which the officer suspects on reasonable grounds a relevant record is or may be stored and retain it for as long as is necessary for the purposes of this Act;
- (f) take reasonable measures to secure or protect a relevant record, or computer or other thing on which a relevant record is or may be stored, against damage or unauthorised removal or interference.

43D. Directions generally

- (1) A direction under this Division may be given orally or in writing.
- (2) A person who, without reasonable excuse, fails to comply with a direction given to the person under this Division commits an offence.

Penalty: a fine of \$12 000.

43E. Exercise of power may be recorded

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

43F. Assistance and use of force

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

43G. Seizure

- (1) If a licensing officer seizes any thing under this Division, the officer must give the person who was in possession of it a receipt for it in the approved form.
- (2) If a licensing officer seizes any thing under this Division, the officer must if practicable allow a person who is otherwise entitled to possession of it to have reasonable access to it.
- (3) A licensing officer who seizes any thing under this Division may take reasonable measures to prevent the thing being concealed, lost, damaged or destroyed.

(4) If it is not practicable to move any thing that has been seized, a licensing officer may do whatever is reasonably necessary to secure it where it is situated and to notify people that it is under seizure.

(5) A person must not, without a licensing officer's approval, interfere or deal with any thing that the person knows, or ought reasonably to know, has been seized by a licensing officer.

Penalty: a fine of \$12 000.

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

(1) The *Criminal and Found Property Disposal Act 2006* applies to and in respect of any thing that is seized under this Division.

(2) For the purposes of the *Criminal and Found Property Disposal Act 2006* the Department is a prescribed agency.

Division 2 — Entry warrants

43I. Applying for entry warrant

(1) A licensing officer may apply to a JP for an entry warrant authorising the entry of a place for compliance purposes.

(2) A licensing officer may apply for an entry warrant for a place even if, under section 42(2), the officer may enter the place without an entry warrant.

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

43J. Application for entry warrant

- (1) In this section —
application means an application under section 43I;
remote communication means any way of communicating at a distance including by telephone, fax, email and radio.
- (2) A reference in this section to making an application includes a reference to giving information in support of the application.
- (3) An application must be made in person before a JP unless —
 - (a) the warrant is needed urgently; and
 - (b) the applicant reasonably suspects that a JP is not available within a reasonable distance of the applicant,in which case —
 - (c) the application may be made to the JP by remote communication; and
 - (d) the JP must not grant it unless satisfied about the matters in paragraphs (a) and (b).
- (4) An application must be made in writing unless —
 - (a) the application is made by remote communication; and
 - (b) it is not practicable to send the JP written material,in which case —
 - (c) the application may be made orally; and
 - (d) the JP must make a written record of the application and any information given in support of it.

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

admissible in proceedings in a court or the State Administrative Tribunal.

43K. Issuing entry warrant

- (1) On an application under section 43I, a JP may issue an entry warrant if satisfied that it is necessary for a licensing officer to enter a place for compliance purposes.
- (2) An entry warrant must contain the following information —
 - (a) a reasonably particular description of the place to which it relates;
 - (b) a reasonably particular description of the compliance purposes for which entry to the place is required;
 - (c) if a contravention of this Act is suspected, the provision concerned;
 - (d) the period, not exceeding 14 days, during which it may be executed;
 - (e) the name of the JP who issued it;
 - (f) the date and time when it was issued.
- (3) An entry warrant must be in the prescribed form.
- (4) If a JP refuses to issue an entry warrant, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

43L. Effect of entry warrant

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

- (3) An entry warrant may be executed by any licensing officer.

Division 3 — Compliance notices

43M. CEO may give compliance notice

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

- (3) The day specified under subsection (2)(e) must be at least 7 days after the day on which the compliance notice is given to the licensee.
- (4) The CEO may, by written notice given to the licensee, amend or cancel a compliance notice.

43N. Contravention of compliance notice

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

Penalty: a fine of \$12 000.

43O. Review of decision to give compliance notice

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

Division 4 — Proceedings and evidence

43P. Legal proceedings

- (1) Proceedings for an offence under this Act or in respect of any other matter arising under this Act may be commenced in the name of the CEO by the CEO or a person authorised to do so by the CEO.
- (2) In any proceedings no proof is required of —
 - (a) the appointment of the CEO; or
 - (b) the authorisation of a person under subsection (1),

but an averment in a prosecution notice or other document that the person is so appointed or authorised is to be taken to be proved in the absence of evidence to the contrary.

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

43Q. Evidentiary certificate

- (1) In proceedings under this Act production of a certificate containing a statement described in subsection (2) and purporting to be signed by the CEO is, without proof of any appointment or signature, evidence of the facts stated in the certificate.
- (2) A certificate may state any or all of the following —
- (a) that a person holds or held, or does not or did not hold, a licence in relation to a particular child care service;
 - (b) that a licence specifies or specified, or does not or did not specify, a particular place;
 - (c) the conditions to which a licence is or was subject;
 - (d) that a licence has or had been suspended or cancelled;
 - (e) that a person has or had been disqualified from —
 - (i) holding a licence; or
 - (ii) being a managerial officer of a corporate licensee; or
 - (iii) being the supervising officer for a child care service;
 - (f) that a compliance notice has or had been given to a person;
 - (g) the day, days or period on or during which anything referred to in any of paragraphs (a) to (f) applied.

43. No privilege against self-incrimination

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

44. Evidence Act 1906 not affected

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

27. Section 45A inserted

At the beginning of Part 5 insert:

45A. Publication of information about child care services

- (1) The CEO may cause to be published, in any form or manner the CEO considers appropriate, information concerning any of the following —
 - (a) child care services;
 - (b) licensees or other persons involved in the provision of child care services;
 - (c) matters that adversely affect or may adversely affect the interests of children to whom child care services are provided.

- (2) Without limiting subsection (1), information published under this section may include details of —
 - (a) compliance notices; and
 - (b) orders made by the State Administrative Tribunal in proceedings under Part 2 Division 6.
- (3) Information published under this section may identify a particular child care service or a particular person, but not a child.
- (4) The CEO must not publish information under this section unless satisfied that it is in the public interest to do so.
- (5) Without limiting section 51, no civil or criminal liability is incurred by the CEO or any other person in respect of the publication, in good faith, of information under this section.

28. Section 45 amended

After section 45(2) insert:

- (3A) An order made under subsection (1) may specify conditions subject to which the exemption is to apply.
- (3B) A person who provides a child care service to which an order made under subsection (1) applies must not contravene a condition specified in the order.
Penalty: a fine of \$12 000.

29. Section 49 replaced

Delete section 49 and insert:

49. False or misleading information

A person must not —

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

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

Penalty: a fine of \$6 000.

30. Section 50 amended

Delete section 50(2)(b) and insert:

- (b) for the purpose of proceedings under this Act;
or

31. Section 51A inserted

After section 50 insert:

51A. CEO may require statutory declaration

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

32. Section 51 amended

- (1) Delete section 51(3) and insert:
 - (3) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (2) Delete section 51(4).

33. Section 53A inserted

After section 52 insert:

53A. Regulations may refer to published documents

- (1) Regulations made under section 52 may adopt the text of any published document specified in the regulations —
 - (a) as that text exists at a particular date; or
 - (b) as that text may from time to time be amended.
- (2) The text may be adopted —
 - (a) wholly or in part; or
 - (b) as modified by the regulations.
- (3) The adoption may be direct (by reference made in the regulations), or indirect (by reference made in any text that is itself directly or indirectly adopted).
- (4) The adoption of text is of no effect unless —
 - (a) the adopted text; and
 - (b) if text is adopted as it may from time to time be amended, either —
 - (i) the amendments to the text; or

(ii) the text as amended,

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

34. Part 6 Division 1 heading inserted

After the heading to Part 6 insert:

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

35. Section 54 amended

In section 54 delete “Part —” and insert:

Division —

Note: The heading to amended section 54 is to read:

Terms used

36. Section 55 amended

In section 55 delete “Part” (first occurrence) and insert:

Division

37. Section 61 amended

In section 61(1) delete “Part” and insert:

Division

38. Part 6 Division 2 inserted

At the end of Part 6 insert:

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

62A. Interpretation Act 1984 not affected

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

62B. Licensing officers

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

62C. Supervising officers

(1) In this section —

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

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

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

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

62D. Suspensions

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

62E. Transitional regulations

- (1) If there is no sufficient provision in this Division for dealing with a transitional matter, regulations made under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (2) In subsection (1) —
transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from this Act as in force immediately before the commencement of a provision of the *Child Care Services Amendment Act 2011* to this Act as in force after that commencement.
- (3) Regulations referred to in subsection (1) may provide that a specified provision of this Act does not apply, or applies with specified modifications, to or in relation to any matter.
- (4) If regulations referred to in subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement of the relevant provision of the *Child Care Services Amendment Act 2011*, the regulations have effect according to their terms.
- (5) In subsections (3) and (4) —
specified means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State or a local government), the rights of that person

existing before the regulations were published in the *Gazette*; or

- (b) to impose liabilities on any person (other than the State, an authority of the State or a local government), in respect of anything done or omitted to be done before the regulations were published in the *Gazette*.

39. Schedule 1 amended

- (1) Delete Schedule 1 item 2 and insert:

- 2. Regulating —
 - (a) objections to the grant of licences; and
 - (b) the surrender of licences.

- (2) In Schedule 1 item 5:

- (a) delete “an applicant or licensee” and insert:

a person

- (b) after “application” insert:

under this Act

- (3) Delete Schedule 1 items 7 and 8 and insert:

- 7. Providing for and in relation to the approval of individuals by the CEO for the purposes of section 5A(1)(a)(ii) and (b)(i), including —
 - (a) the making of applications for approval; and
 - (b) matters of which the CEO has to be satisfied before giving approval, including requirements as to the

- qualifications, training or experience of applicants
for approval; and
- (c) the suspension or cancellation of approval by the
State Administrative Tribunal.
8. Providing for and in relation to the nomination of
individuals as supervising officers for the purposes of
section 5A(1)(b)(ii).
- (4) Delete Schedule 1 item 19 and insert:
19. Prescribing fees payable in respect of matters under this Act
including —
- (a) fees for applications; and
 - (b) fees by way of penalty for the late lodgment of
applications; and
 - (c) fees for licences,
- and prescribing the persons liable to pay those fees.
- (5) Delete Schedule 1 item 20.
- (6) After Schedule 1 item 22 insert:
23. Conferring a right to apply to the State Administrative
Tribunal for a review of a decision of the CEO made under
the regulations.

Child Care Services Amendment Act 2011

Part 3 Working with Children (Criminal Record Checking) Act 2004
amended

s. 40

**Part 3 — Working with Children (Criminal Record
Checking) Act 2004 amended**

40. Act amended

This Part amends the *Working with Children (Criminal Record
Checking) Act 2004*.

41. Section 38 amended

In section 38(3)(b) delete “a nominated supervising officer,”.

