



Western Australia

Child Care Services Act 2007

Child Care Services Regulations 2007

As at 07 Jan 2012

Version 01-b0-02

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Child Care Services Regulations 2007

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Western Australia

Child Care Services Act 2007

Child Care Services Regulations 2007

Part 1 — Preliminary

1. Citation

These regulations are the *Child Care Services Regulations 2007*¹.

Note: Under the *Interpretation Act 1984* section 25(3), these regulations take effect on the day on which the *Child Care Services Act 2007* section 52 commences.

Part 2 — General provisions

2. Managerial officer of incorporated association: s. 3

- (1) For the purposes of paragraph (a)(ii) of the definition of *managerial officer* in section 3 of the Act, the prescribed class of function is responsibility, as a member of the committee of an incorporated association, for managing the provision of a child care service by the association.
- (2) For the purposes of subregulation (1), it does not matter that the responsibility is exercised with other people.

[Regulation 2 inserted in Gazette 6 Jan 2012 p. 4.]

3. Age prescribed for s. 4(1)

The age of 15 years and 6 months is prescribed for the purposes of section 4(1) of the Act.

4. Care that is not a child care service

- (1) In this regulation —
 - care giver* means a person who provides care to the child;
 - care session* means a discrete period during which care is provided to the child;
 - disability* has the meaning given in the *Disability Services Act 1993* section 3;
 - first aid qualification* means a certificate or other document evidencing the successful completion of an approved first aid training course;
 - secondary programme* has the meaning given in the *School Education Regulations 2000* regulation 3(1).
- (2) Care provided to a child is excluded from the application of section 4(1) of the Act if —
 - (a) the child has reached 2 months of age; and

- (b) a parent or other relative of the child is available to attend to the child's immediate physical needs; and
 - (c) each care session does not exceed 3 hours; and
 - (d) the care sessions in any week do not exceed 12 hours; and
 - (e) the number of care sessions on any day does not exceed 2 and those sessions are separated by a period of at least one hour; and
 - (f) in circumstances where there is one care giver —
 - (i) the care giver has reached 21 years of age; and
 - (ii) the care giver has a current first aid qualification; and
 - (iii) another person who has reached 18 years of age is available to provide assistance in an emergency situation;and
 - (g) in circumstances where there are 2 or more care givers —
 - (i) at least one of the care givers has reached 21 years of age; and
 - (ii) at least one of the care givers has a current first aid qualification.
- (3) Care provided to a child with a disability is excluded from the application of section 4(1) of the Act if —
- (a) the care is funded by a grant of financial assistance approved under the *Disability Services Act 1993* section 24(1)(c); and
 - (b) the grant of financial assistance was made to a body corporate; and
 - (c) the care is provided by an employee of that body corporate.

r. 5

- (4) Care provided to a child with a disability is excluded from the application of section 4(1) of the Act until 31 August 2009 if the care —
- (a) is funded by a grant of financial assistance approved under the *Disability Services Act 1993* section 24(1)(a) or (b); or
 - (b) is funded by a grant of financial assistance approved under the *Disability Services Act 1993* section 24(1)(c) and is not care to which subregulation (3) applies.
- (5) Care provided to a child is excluded from the application of section 4(1) of the Act if the care is provided solely for the purposes of —
- (a) the child's participation in religious instruction or sporting, educational, recreational or cultural events or activities; or
 - (b) the child's membership of a non-profit community organisation.
- (6) Care provided solely to children who are enrolled in a secondary programme is excluded from the application of section 4(1) of the Act.

*[Regulation 4 amended in Gazette 26 Feb 2008 p. 659;
6 Jan 2012 p. 5.]*

5. Operator of creche facility to display notice

- (1) In this regulation —
creche facility means a facility for the provision of care to which regulation 4(2) applies.
- (2) A person who operates a creche facility must ensure that a notice in accordance with subregulation (3) is displayed in a prominent position at or near the entrance to the place where the creche facility is operated.
Penalty: a fine of \$2 000.

- (3) The notice is to contain information to the effect that the creche facility is not a child care service for the purposes of the Act and is therefore not subject to the licensing requirements of the Act.

[5A. Deleted in Gazette 6 Jan 2012 p. 5.]

Part 3A — Supervising officers

[Heading inserted in Gazette 6 Jan 2012 p. 5.]

Division 1 — Approvals

[Heading inserted in Gazette 6 Jan 2012 p. 5.]

6A. Terms used

In this Division, unless the contrary intention appears —

application means —

- (a) an application made under regulation 6D(1) for an approval to act; or
- (b) an application made under regulation 6D(2) for a supervisor approval;

approval means —

- (a) an approval to act; or
- (b) a supervisor approval;

approval criteria has the meaning given in regulation 6C(1);

approval to act has the meaning given in regulation 6D(1);

supervisor approval has the meaning given in regulation 6D(2).

[Regulation 6A inserted in Gazette 6 Jan 2012 p. 5-6.]

6B. Purpose of Division

The purpose of this Division is to set out provisions relating to approvals for the purposes of section 5A(1)(a)(ii) and (b)(i) of the Act.

[Regulation 6B inserted in Gazette 6 Jan 2012 p. 6.]

6C. Approval criteria

- (1) For the purposes of this Division the ***approval criteria*** are —

- (a) that the applicant has the ability to supervise and control on a day-to-day basis the provision of a child care service; and
 - (b) that the applicant is otherwise a fit and proper person to be involved in the provision of a child care service; and
 - (c) that the applicant holds at least one relevant qualification.
- (2) In subregulation (1)(c) —
- relevant qualification** means —
- (a) a degree or diploma in early childhood care or early childhood education from an Australian university or other tertiary institution; or
 - (b) a 2 year certificate in child care studies; or
 - (c) a diploma or associate diploma in child care; or
 - (d) a mothercraft nursing qualification; or
 - (e) a degree or diploma in education, social sciences or behavioural sciences; or
 - (f) a certificate or other document evidencing the successful completion of an approved first aid training course.

[Regulation 6C inserted in Gazette 6 Jan 2012 p. 6.]

6D. Application for approval

- (1) An individual may apply to the CEO for approval to act in place of an individual who holds a licence (an **approval to act**).
- (2) An individual may apply to the CEO for approval as a person suitable to have responsibility for the day-to-day supervision and control of a child care service (a **supervisor approval**).

[Regulation 6D inserted in Gazette 6 Jan 2012 p. 6.]

6E. Form of application

- (1) An application must be —
 - (a) in writing; and
 - (b) in the approved form.
- (2) The approved form must —
 - (a) be completed in accordance with any instructions on or attached to the form; and
 - (b) be accompanied by any information or document (including a criminal record check) specified in the form; and
 - (c) in the case of an application for an approval to act — be accompanied by the licensee's written consent to the application.
- (3) Despite subregulation (2), the CEO may consider and deal with an application if, in the opinion of the CEO, the requirements of that subregulation have been substantially complied with.

[Regulation 6E inserted in Gazette 6 Jan 2012 p. 7.]

6F. CEO may seek additional information

- (1) The CEO may ask an applicant for any additional information or document that the CEO considers is or could be relevant to making a decision on the application.
- (2) Without limiting subregulation (1), for the purpose of deciding whether or not an applicant meets the criteria listed in regulation 6C(1)(a) and (b), 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) undergo a medical, psychiatric or psychological test or examination specified by the CEO.
- (3) If the CEO makes a request under subregulation (1) or (2), the CEO does not have to consider the application, or consider it further, until the request is complied with.
- (4) Any costs incurred in complying with a request under subregulation (1) or (2) are to be paid by the applicant unless the CEO determines otherwise.

[Regulation 6F inserted in Gazette 6 Jan 2012 p. 7.]

6G. Referees

- (1) If an application nominates referees for the applicant, those referees must include —
 - (a) a referee who knows the applicant and who has had experience in children's services; and
 - (b) a referee who is a previous employer of the applicant or who has worked with the applicant in a paid or unpaid capacity.
- (2) A person is not eligible to act as a referee for an applicant if the person is —
 - (a) an employee of the applicant; or
 - (b) married, or related (including by marriage), to the applicant; or
 - (c) a de facto partner of the applicant; or
 - (d) another applicant.

[Regulation 6G inserted in Gazette 6 Jan 2012 p. 8.]

6H. Decision as to approval

- (1) The CEO may grant or refuse to grant an approval.
- (2) The CEO must not grant an approval unless the CEO is satisfied that the applicant meets the approval criteria.

- (3) The CEO must not grant an approval if the applicant is disqualified under section 29(4)(e)(iii) or 30C(4)(d)(iii) of the Act from being the supervising officer for a child care service.
- (4) The CEO must give written notice of his or her decision under subregulation (1) to the applicant.

[Regulation 6H inserted in Gazette 6 Jan 2012 p. 8.]

6I. Conditions of approval

- (1) The CEO may grant an approval subject to any conditions that the CEO considers appropriate.
- (2) Without limiting subregulation (1), it is a condition of each approval that the holder of the approval notifies the CEO in writing of a change in his or her name or mailing address.
- (3) A person who contravenes a condition of his or her approval commits an offence.

Penalty: a fine of \$2 000.

[Regulation 6I inserted in Gazette 6 Jan 2012 p. 8.]

6J. Amendment of conditions

- (1) In this regulation —
amend a condition, in relation to an approval, means —
 - (a) to impose a new condition on the approval; or
 - (b) to change or remove an existing condition of the approval (other than the condition referred to in regulation 6I(2)).
- (2) The CEO may, by written notice given to the holder of an approval, amend a condition.
- (3) The CEO may exercise the power in subregulation (2) —
 - (a) on the CEO's own initiative; or
 - (b) on an application made by the holder of the approval in the approved form.

- (4) The CEO may ask an applicant under subregulation (3)(b) for any additional information or document that the CEO considers is or could be relevant to making a decision on the application.
- (5) If the CEO makes a request under subregulation (4), the CEO does not have to consider the application, or consider it further, until the request is complied with.

[Regulation 6J inserted in Gazette 6 Jan 2012 p. 8-9.]

6K. Reassessment of suitability

- (1) The CEO may at any time reassess whether the holder of an approval meets the approval criteria.
- (2) The CEO may ask the holder of an approval for any information or document that the CEO considers is or could be relevant to a reassessment under subregulation (1).
- (3) Without limiting subregulation (2), the CEO may, for the purposes of a reassessment under subregulation (1), ask the holder of an approval to do one or more of the things listed in regulation 6F(2).

[Regulation 6K inserted in Gazette 6 Jan 2012 p. 9.]

6L. Suspension or cancellation of approval

- (1) The CEO may suspend or cancel an approval if —
 - (a) the CEO is no longer satisfied that the holder of the approval meets the approval criteria; or
 - (b) the holder of the approval is disqualified under section 29(4)(e)(iii) or 30C(4)(d)(iii) of the Act from being the supervising officer for a child care service.
- (2) Before exercising the power in subregulation (1), the CEO must —
 - (a) give the holder of the approval a notice (a *show cause notice*) stating the following —

- (i) that the CEO intends to suspend or cancel the approval;
 - (ii) the reasons for the proposed suspension or cancellation;
 - (iii) that the holder of the approval may, within 30 days after the notice is given, give the CEO a written response to the proposed suspension or cancellation;
 - and
 - (b) consider any written response from the holder of the approval received within the period referred to in paragraph (a)(iii).
- (3) The CEO must give the holder of an approval written notice of a decision to suspend or cancel the approval under subregulation (1) (a *notice of decision*).
- (4) A notice of decision must state —
- (a) the day on which the decision takes effect; and
 - (b) in the case of a decision to suspend — the period of suspension.
- (5) A decision to suspend or cancel an approval under subregulation (1) takes effect —
- (a) at the end of 14 days after the giving of the notice of decision; or
 - (b) if another period is specified in the notice of decision — at the end of that period.

[Regulation 6L inserted in Gazette 6 Jan 2012 p. 9-10.]

6M. Surrender of approval

- (1) A person who holds an approval may, by written notice given to the CEO, surrender the approval.
- (2) A notice under subregulation (1) must be in the approved form.

- (3) On the surrender of an approval under subregulation (1), the approval ceases to have effect.

[Regulation 6M inserted in Gazette 6 Jan 2012 p. 10.]

6N. Approval document

- (1) If the CEO grants an approval to a person the CEO must issue an approval document to the person.
- (2) An approval document —
- (a) must contain the following information —
 - (i) the name of the holder of the approval;
 - (ii) any conditions of the approval;and
 - (b) may contain any other information the CEO considers appropriate.

[Regulation 6N inserted in Gazette 6 Jan 2012 p. 10.]

6O. Return of approval document required in certain circumstances

- (1) If an approval —
- (a) has been suspended or cancelled under regulation 6L; or
 - (b) has been surrendered under regulation 6M,

the person who was the holder of the approval must, as soon as practicable after the suspension, cancellation or surrender, return his or her approval document to the CEO.

Penalty: a fine of \$2 000.

- (2) If the CEO amends a condition of an approval under regulation 6J, the holder of the approval must, if required by the CEO to do so, return his or her approval document to the CEO for amendment.

Penalty: a fine of \$2 000.

[Regulation 6O inserted in Gazette 6 Jan 2012 p. 11.]

6P. Review by State Administrative Tribunal

(1) In this regulation —

person aggrieved means —

- (a) a person upon whose application a relevant decision is made; or
- (b) the person to whom a relevant decision relates.

relevant decision means a decision of the CEO —

- (a) under regulation 6H to refuse to grant an approval;
- (b) under regulation 6I to grant an approval subject to a particular condition;
- (c) under regulation 6J to amend or refuse to amend a condition of an approval;
- (d) under regulation 6L to suspend or cancel an approval.

(2) A person aggrieved by a relevant decision may apply to the State Administrative Tribunal for a review of the decision.

[Regulation 6P inserted in Gazette 6 Jan 2012 p. 11.]

6Q. Offence to pretend to be holder of approval

A person must not hold himself or herself out as being the holder of an approval unless the person holds an approval.

Penalty: a fine of \$6 000.

[Regulation 6Q inserted in Gazette 6 Jan 2012 p. 11.]

Division 2 — Nominations

[Heading inserted in Gazette 6 Jan 2012 p. 12.]

6R. Terms used

In this Division —

licensee means a corporate licensee or a public authority that is the holder of a licence;

nomination means a nomination made under regulation 6T(1);

supervisor approval has the meaning given in regulation 6D(2).

[Regulation 6R inserted in Gazette 6 Jan 2012 p. 12.]

6S. Purpose of Division

The purpose of this Division is to set out provisions relating to nominations for the purposes of section 5A(1)(b)(ii) of the Act.

[Regulation 6S inserted in Gazette 6 Jan 2012 p. 12.]

6T. Nomination

- (1) A licensee for a child care service may nominate an individual who holds a supervisor approval (the *nominee*) as the supervising officer for the service.
- (2) A nomination must be —
 - (a) made to the CEO in writing; and
 - (b) in the approved form; and
 - (c) accompanied by the nominee's written consent to the nomination.
- (3) A nomination must specify the times when the nominee is to be the supervising officer for the service concerned.
- (4) For the purposes of subregulation (3) a nomination may specify —
 - (a) all times when the service is provided; or
 - (b) particular times when the service is provided.
- (5) If there is more than one nominee for a child care service, the times specified under subregulation (3) in respect of a nominee must not be the same as, or overlap with, the times specified in respect of another nominee.
- (6) A nomination made in accordance with this regulation takes effect —
 - (a) on the day on which the nomination is made to the CEO;
or

- (b) if another day is specified in the nomination — on that day.

[Regulation 6T inserted in Gazette 6 Jan 2012 p. 12.]

6U. Amendment or revocation of nomination

- (1) A licensee may, by written notice given to the CEO, amend or revoke a nomination made by the licensee.
- (2) If a person nominated as the supervising officer for a child care service ceases to be employed as a member of the staff of the service, the licensee for the service must, by written notice given to the CEO, revoke the nomination.

Penalty: a fine of \$2 000.

- (3) A notice under subregulation (1) or (2) must be in the approved form.
- (4) If a notice is given under subregulation (1) or (2), the amendment or revocation, as the case requires, takes effect —
 - (a) on the day on which the notice is given to the CEO; or
 - (b) if another day is specified in the notice — on that day.

[Regulation 6U inserted in Gazette 6 Jan 2012 p. 13.]

Part 3 — Transitional matters

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

[Heading inserted in Gazette 6 Jan 2012 p. 13.]

6. Terms used

(1) In this Division —

commencement day means the day on which these regulations come into operation;

initial licence period, in relation to a licence, means the period for which the licence has effect after the commencement day excluding any period for which it is renewed under the Act;

notified service means a child care service that has been the subject of written notification under the *Children and Community Services Regulations 2006* regulation 28(2)(a);

Part 8 provisions has the meaning given in section 54 of the Act.

(2) A reference in this Division to a provision of the *Children and Community Services Regulations 2006* is a reference to that provision as in force before its repeal by the *Children and Community Services Amendment Regulations 2007*.

[Regulation 6 amended in Gazette 6 Jan 2012 p. 13.]

7. Supervising officers

If, immediately before the commencement day, a person was taken to be the supervising officer for a child care service because of the operation of the *Children and Community Services Regulations 2006* regulation 25, the person is to be regarded as the supervising officer for that child care service for the purposes of the Act until —

- (a) the end of the initial licence period for the licence relating to that child care service; or

- (b) the appointment of another supervising officer for that child care service,

whichever happens first.

8. Application of s. 18 to certain licences

If, immediately before the commencement day, the *Children and Community Services Act 2004* section 212 did not apply to a licence because of the operation of the *Children and Community Services Regulations 2006* regulation 26, section 18 of the Act does not apply to the licence during the initial licence period.

9. Holders of particular types of licence

If, immediately before the commencement day, a person was taken to be the holder of a particular type of licence because of the operation of the *Children and Community Services Regulations 2006* regulation 27A(1), (2), (3) or (4), the person is to be regarded as the holder of that type of licence under and subject to the Act.

10. Notified services

- (1) If, immediately before the commencement day, an application for a licence in respect of a notified service has been made under the Part 8 provisions but has not been determined, the notified service is to be taken to be provided under and in accordance with a licence authorising its provision at the place where it is provided until the day on which a licence in respect of the notified service is granted or refused by the CEO.
- (2) If, immediately before the commencement day, an application for a licence in respect of a notified service has not been made under the Part 8 provisions, the notified service is to be taken to be provided under and in accordance with a licence authorising its provision at the place where it is provided until —
 - (a) in the case where an application for a licence in respect of the notified service is made under the Act before 1 March 2008 — the day on which a licence in respect

of the notified service is granted or refused by the CEO;
and

(b) in any other case — 1 March 2008.

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

[Heading inserted in Gazette 6 Jan 2012 p. 14.]

11. Supervising officers

(1) In this regulation —

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 of the Act 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 (b)(i) of the old definition is, on and after that day, to be taken to have been nominated by the licensee of the service as the supervising officer for the service at all times when the service is provided.

(3) Regulation 6U applies to a nomination that has effect because of the operation of subregulation (2) as if the nomination had been made by the licensee of the child care service.

[Regulation 11 inserted in Gazette 6 Jan 2012 p. 14.]

Notes

- ¹ This is a compilation of the *Child Care Services Regulations 2007* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

| Citation | Gazettal | Commencement |
|---|---------------------------|--|
| <i>Child Care Services Regulations 2007</i> | 7 Aug 2007 p. 4059-70 | 10 Aug 2007 (see note to r. 1 and <i>Gazette</i> 9 Aug 2007 p. 4071) |
| <i>Child Care Services Amendment Regulations 2007</i> | 30 Nov 2007 p. 5929-30 | r. 1 and 2: 30 Nov 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Dec 2007 (see r. 2(b)) |
| <i>Child Care Services Amendment Regulations 2008</i> | 26 Feb 2008 p. 659 | r. 1 and 2: 26 Feb 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 27 Feb 2008 (see r. 2(b)) |
| Reprint 1: The <i>Child Care Services Regulations 2007</i> as at 6 Mar 2009 (includes amendments listed above) | | |
| <i>Child Care Services Amendment Regulations 2011</i> | 6 Jan 2012 p. 4-14 | r. 1 and 2: 6 Jan 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 7 Jan 2012 (see r. 2(b) and <i>Gazette</i> 6 Jan 2012 p. 3) |

Defined Terms

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

| Defined Term | Provision(s) |
|-------------------------------|---------------------|
| amend a condition | 6J(1) |
| application..... | 6A |
| approval | 6A |
| approval criteria | 6A, 6C(1) |
| approval to act..... | 6A, 6D(1) |
| care giver..... | 4(1) |
| care session | 4(1) |
| commencement day | 6(1), 11(1) |
| creche facility..... | 5(1) |
| disability..... | 4(1) |
| first aid qualification | 4(1) |
| initial licence period..... | 6(1) |
| licensee..... | 6R |
| nomination | 6R |
| nominee..... | 6T(1) |
| notice of decision | 6L(3) |
| notified service..... | 6(1) |
| old definition | 11(1) |
| Part 8 provisions | 6(1) |
| person aggrieved | 6P(1) |
| relevant decision | 6P(1) |
| relevant qualification | 6C(2) |
| secondary programme | 4(1) |
| show cause notice | 6L(2) |
| supervisor approval..... | 6A, 6D(2), 6R |