



Western Australia

Children and Community Services Act 2004

Children and Community Services Regulations 2006

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Western Australia

Children and Community Services Regulations 2006

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at 2 February 2007

Western Australia

Children and Community Services Act 2004

Children and Community Services Regulations 2006

Part 1 — Preliminary

1. Citation

These regulations are the *Children and Community Services Regulations 2006*¹.

2. Commencement

These regulations come into operation on the day on which section 250 comes into operation¹.

3. Terms used in these regulations

In these regulations, unless the contrary intention appears —
“**President**” means the President of the Children’s Court;
“**section**” means a section of the Act.

Part 2 — Children in the CEO's care

4. Approval of carers

- (1) The CEO may approve an individual for the purposes of section 79(2)(a)(i) if —
 - (a) the CEO is satisfied that the individual —
 - (i) is able to provide care for a child in a way that promotes the wellbeing of the child, promotes the child's family and interpersonal relationships, and protects the child from harm;
 - (ii) is able to provide a safe living environment for a child;
 - (iii) is able to work cooperatively with officers, a child's family and other people when providing care for a child;
 - (iv) is able to take responsibility for the development of his or her competency and skills as a carer; and
 - (v) is a person of good character and repute; and
 - (b) a negative notice or an interim negative notice has not been issued to the individual under the *Working with Children (Criminal Record Checking) Act 2004*.
- (2) The CEO may, subject to subregulation (3), revoke an approval under subregulation (1) if —
 - (a) the CEO can no longer be satisfied as to a matter referred to in subregulation (1)(a) in relation to the individual;
 - (b) a negative notice or an interim negative notice has been issued to the individual under the *Working with Children (Criminal Record Checking) Act 2004*; or
 - (c) there are reasonable grounds for believing that the approval was obtained improperly.

- (3) Before revoking an approval the CEO must —
- (a) give a written notice to the individual —
 - (i) stating the reasons for the proposed revocation;
and
 - (ii) informing the individual that the individual is entitled to make representations to the CEO in respect of the proposed revocation within 28 days after receipt of the notice;
 - and
 - (b) have regard to any representations made within the period referred to in paragraph (a)(ii).

5. Records — prescribed information

- (1) The following information is prescribed for the purposes of section 128 —
- (a) the child's name;
 - (b) the child's date of birth and place of birth to the extent that such information is available;
 - (c) a copy of the child's care plan or provisional care plan and any modifications to it;
 - (d) information about the child's health, including a copy of any medical records and immunisation records —
 - (i) relating to the period in which the child is in the CEO's care; or
 - (ii) otherwise provided to the CEO;
 - (e) information about the child's education, including a copy of any school reports —
 - (i) relating to the period in which the child is in the CEO's care; or
 - (ii) otherwise provided to the CEO;

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- (f) information about the child's cultural, ethnic, religious and family background to the extent that such information is available;
 - (g) any other information considered by the CEO to be relevant to the child.
- (2) In subregulation (1)(c) —
- “care plan”** has the meaning given to that term in section 89(1);
 - “provisional care plan”** has the meaning given to that term in section 39(1).

Part 3 — Restraint, search and seizure

6. Prescribed amount (s. 112 — definition of “disposable article”)

For the purposes of paragraph (c) of the definition of “disposable article” in section 112 the amount of \$30 is prescribed.

7. Officer to record use of restraint

An authorised officer who restrains a child in the exercise of the power conferred by section 114 (the “**incident**”) must —

- (a) record the date and time of the incident; and
- (b) give the CEO a written report on the incident as soon as practicable after it occurs.

8. How seized articles are to be dealt with

- (1) In this regulation —
“**seized article**” means a thing or substance seized under section 116.
- (2) This regulation applies if it is not reasonably practicable for an officer to return a seized article to a child.
- (3) The CEO may direct that the seized article be sold or destroyed or disposed of in some other way.
- (4) If the CEO issues a direction under subregulation (3), the officer must arrange for the sale, destruction or disposal of the seized article in accordance with the direction.
- (5) If the seized article is sold, the proceeds of the sale, after the deduction of the reasonable costs of the sale, must be credited to the Consolidated Account².

Part 4 — Pre-hearing conferences

9. Terms used in this Part

In this Part —

“**audio link**” means facilities, including telephones, that enable, at the same time, the convenor and other people present at a pre-hearing conference to hear a person at another place and vice versa;

“**video link**” means facilities that enable, at the same time, the convenor and other people present at a pre-hearing conference to see and hear a person at another place and vice versa.

10. Appointment of convenors

For the purposes of section 136 the President may appoint as a convenor —

- (a) a person by virtue of the office or position held by the person in the Court; or
- (b) a person who, in the opinion of the President, has appropriate qualifications and experience.

11. Tenure, terms and conditions of appointment

- (1) A convenor appointed under regulation 10(b) holds office for the period, not exceeding 3 years, specified in his or her instrument of appointment and is eligible for reappointment.
- (2) The remuneration, allowances, and other terms and conditions of appointment, of a convenor appointed under regulation 10(b) are as described in his or her instrument of appointment.

12. Resignation

A convenor appointed under regulation 10(b) may resign from office by giving the President a signed letter of resignation.

13. Removal from office

The President may remove a convenor appointed under regulation 10(b) from office at any time.

14. People who may attend pre-hearing conference

- (1) The following people may attend a pre-hearing conference —
 - (a) the child unless the convenor of the conference otherwise directs;
 - (b) any other party to the protection proceedings;
 - (c) a legal representative of a party to the protection proceedings;
 - (d) a person allowed to attend under subregulation (2).
- (2) The convenor of a pre-hearing conference may allow a person to attend the conference if the convenor considers that the person is significant in the child's life.

15. Participation using video link, audio link, etc.

The convenor of a pre-hearing conference must, if directed by the Court to do so, and may, in any other case, allow a person who is unable to attend the pre-hearing conference in person to participate in the conference by means of video link, audio link or other electronic means.

Part 5 — Reports about child

16. Terms used in this Part

In this Part —

“**panel**” means the panel of names referred to in regulation 18(1);

“**report**” has the meaning given to that term in section 138.

17. Appointment of people to provide reports

- (1) Unless subregulation (2) applies, a person referred to in section 139(1) is to be appointed from the panel.
- (2) If the Court considers that a report is required from a person with particular qualifications or experience and such a person is not on the panel, the Court may appoint for the purposes of section 139 a person who, in the opinion of the Court, has the necessary qualifications or experience.

18. President to establish panel

- (1) The President must establish and maintain a panel of names of people who —
 - (a) in the opinion of the President have appropriate qualifications and experience in one or more of the fields of medicine, psychology, psychiatry and social work; and
 - (b) are willing to be appointed for the purposes of section 139.
- (2) The President may remove the name of a person from the panel at any time.

19. Terms and conditions of appointment

The remuneration, allowances, and other terms and conditions of appointment, of a person appointed for the purposes of

section 139 are as described in his or her instrument of appointment.

20. Costs of report

- (1) A party to protection proceedings is to pay the costs of a report given in those proceedings if the Court so orders.
- (2) The Court must not make an order under subregulation (1) unless it is satisfied that there are exceptional reasons for doing so.

Part 6 — Miscellaneous

21. Payments to enduring parental carers

- (1) For the purposes of section 65 the scale of amounts set out in the Table to this subregulation is prescribed.

Table

Age of child	Amount
0 to 6 years of age	\$251.93
7 to 12 years of age	\$316.45
13 to 18 years of age	\$405.45

- (2) Payments of amounts prescribed under subregulation (1) are to be made at fortnightly intervals.

21A. Work prescribed for s. 191(4)

Work that involves the collection of shopping trolleys at or in the vicinity of a shop or other retail outlet is prescribed for the purposes of section 191(4).

[Regulation 21A inserted in Gazette 18 Aug 2006 p. 3367.]

22. Prescribed offences

An offence that is a Class 1 offence or a Class 2 offence, as those terms are defined in the *Working with Children (Criminal Record Checking) Act 2004* section 4, is prescribed for the purposes of the definition of “prescribed offence” in section 197.

22A. Age prescribed for s. 198(1)

The age of 15 years and 6 months is prescribed for the purposes of section 198(1).

[Regulation 22A inserted in Gazette 1 Mar 2006 p. 927; amended in Gazette 18 Aug 2006 p. 3367.]

23. 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;

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

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

“**secondary programme**” has the meaning given to that term in the *School Education Regulations 2000* regulation 3(1).

(2) Care provided to a child is excluded from the application of section 198(1) if —

(a) the child has reached 2 months of age;

[(b) deleted]

(c) a parent or other relative of the child is available to attend to the child’s immediate physical needs;

(d) each care session does not exceed 3 hours;

(e) the care sessions in any week do not exceed 12 hours;

(f) 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;

(g) in circumstances where there is one care giver —

(i) the care giver has reached 21 years of age;

(ii) the care giver has current first aid qualifications;
and

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- (iii) another person who has reached 18 years of age is available to provide assistance in an emergency situation;
- and
- (h) 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 current first aid qualifications.
- (3) Care provided to a child with a disability is excluded from the application of section 198(1) if —
 - (a) the care is funded by a grant of financial assistance approved under the *Disability Services Act 1993* section 24(1)(c);
 - (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.
- (4) Care provided to a child with a disability is excluded from the application of section 198(1) for the period of 2 years after the day on which these regulations come into operation 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 198(1) 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 198(1).
[Regulation 23 amended in Gazette 1 Mar 2006 p. 927-8; 18 Aug 2006 p. 3368; 8 Dec 2006 p. 5370.]

23A. Operator of creche facility to display notice

- (1) In this regulation —
“**creche facility**” means a facility for the provision of care to which regulation 23(2) applies.
- (2) A person who operates a creche facility on or after 1 March 2007 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.
[Regulation 23A inserted in Gazette 18 Aug 2006 p. 3368.]

Part 7 — Transitional arrangements

24. Terms used in this Part

- (1) In this Part, unless the contrary intention appears —
 - “**commencement day**” means the day on which these regulations come into operation;
 - “**existing authorisation**” means a licence or permit referred to in the Act Schedule 1 clause 18(1);
 - “**initial authorisation period**”, in relation to an existing authorisation, means the period for which the authorisation has effect after commencement day excluding any period for which it is renewed under the Act.
- (2) If a term used in this Part is defined in section 197, it has the same meaning in this Part unless the contrary intention appears.

25. Responsible officers to continue as supervising officers

- (1) A person who, immediately before commencement day, was the responsible officer for a child care service to which an existing authorisation applies is to be taken to be the supervising officer for the service for the purposes of regulations referred to in section 232 until —
 - (a) the end of the initial authorisation period; or
 - (b) the appointment of another supervising officer for the service,whichever happens first.
- (2) In subregulation (1) —
 - “**responsible officer**” for a child care service means the individual who, under the *Community Services (Child Care) Regulations 1988*³ or the *Community Services (Outside School Hours Care) Regulations 2002*³, was directly responsible for the effective supervision of the service.

26. Application of section 212 to existing authorisations

- (1) Section 212 does not apply to an existing authorisation during the initial authorisation period.
- (2) In subregulation (1) —
“existing authorisation” does not include a licence or permit that authorises the provision of a family day care service.

27. Period for which certain existing authorisations have effect

- (1) If the specified period for an existing authorisation ends within 6 months after commencement day —
 - (a) the Act Schedule 1 clause 18(2) does not apply to the authorisation; and
 - (b) the authorisation has effect, under and subject to the Act, for the period beginning on commencement day and ending 6 months after the end of the specified period.
- (2) In subregulation (1) —
“specified period” means the period referred to in the Act Schedule 1 clause 18(2).

27A. Holders of existing authorisations taken to hold licences of a particular type

- (1) A person who holds an existing authorisation —
 - (a) to which the *Community Services (Child Care) Regulations 1988*³ applied immediately before commencement day; and
 - (b) which authorises the provision of a child care service other than a family day care service,

is to be taken to hold a child care licence as defined in the *Children and Community Services (Child Care) Regulations 2006* regulation 3.

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- (2) A person who holds an existing authorisation —
- (a) to which the *Community Services (Child Care) Regulations 1988*³ applied immediately before commencement day; and
 - (b) which authorises the provision of a family day care service,

is to be taken to hold a family day care licence as defined in the *Children and Community Services (Family Day Care) Regulations 2006* regulation 3.

- (3) A person who holds an existing authorisation which was an outside school hours care centre licence or outside school hours care centre permit under the *Community Services (Outside School Hours Care) Regulations 2002*³ immediately before commencement day is to be taken to hold an outside school hours care licence as defined in the *Children and Community Services (Outside School Hours Care) Regulations 2006* regulation 3.

- (4) A person who holds an existing authorisation which was a school age family day care licence or school age family day care permit under the *Community Services (Outside School Hours Care) Regulations 2002*³ immediately before commencement day is to be taken to hold an outside school hours family day care licence as defined in the *Children and Community Services (Outside School Hours Family Day Care) Regulations 2006* regulation 3.

[Regulation 27A inserted in Gazette 1 Mar 2006 p. 928-9.]

28. Certain unlicensed child care service operators to have time to apply for licence

- (1) This regulation applies to a child care service if it is a child care service under section 198(1)(c) that —
- (a) was provided immediately before commencement day; and

- (b) is not covered by an existing authorisation.
- (2) If a person who provides a child care service to which this regulation applies —
- (a) gives written notification of the provision of the service to the CEO within one year after commencement day; and
 - (b) makes an application for a licence in respect of the service within 2 years after commencement day,

then, for the purposes of section 201, the service is to be taken, during the relevant period, to be provided under and in accordance with a licence authorising its provision at the place where it is provided.

- (3) Written notification for the purposes of subregulation (2)(a) must —
- (a) be in a form approved by the CEO;
 - (b) specify the full name, age and postal address of the person giving the notification;
 - (c) if the person giving the notification is not responsible for the day-to-day supervision and control of the child care service, specify the name, age and postal address of the person who has that responsibility;
 - (d) specify the address of the place at which the child care service is provided;
 - (e) specify the type of child care service provided; and
 - (f) specify the number of children for whom the child care service is provided.
- (4) In subregulation (2) —
- “relevant period”** means the period beginning on commencement day and ending on the day on which a licence in respect of the child care service is granted or refused by the CEO.

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- (5) For the purposes of the definition of “relevant period” in subregulation (4), if the application referred to in subregulation (2)(b) is withdrawn, a licence in respect of the child care service is to be taken to have been refused by the CEO.

[Regulation 28 amended in Gazette 18 Aug 2006 p. 3368.]

29. Children in the CEO’s care

- (1) This regulation applies to a child if immediately before commencement day the child —
- (a) was being cared for by a person pursuant to an arrangement made —
 - (i) by the Director-General as defined in the *Child Welfare Act 1947*³ section 4(1); and
 - (ii) with the consent of a parent of the child;
 - and
 - (b) was not the subject of an order or proceedings under the *Child Welfare Act 1947*³.
- (2) A child to whom this regulation applies is to be taken to be a child —
- (a) who is in the CEO’s care for the purposes of the Act Part 4; and
 - (b) to whom care is provided under a placement arrangement as defined in section 3.

Notes

- ¹ This reprint is a compilation as at 2 February 2007 of the *Children and Community Services Regulations 2006* 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>Children and Community Services Regulations 2006</i>	18 Jan 2006 p. 353-72	1 Mar 2006 (see r. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Children and Community Services Amendment Regulations 2006</i>	1 Mar 2006 p. 927-9	1 Mar 2006
<i>Children and Community Services Amendment Regulations (No. 2) 2006</i>	18 Aug 2006 p. 3367-8	18 Aug 2006
<i>Children and Community Services Amendment Regulations (No. 3) 2006</i>	8 Dec 2006 p. 5369-70	8 Dec 2006

Reprint 1: The Children and Community Services Regulations 2006 as at 2 Feb 2007
(includes amendments listed above)

- ² Under the *Financial Legislation Amendment and Repeal Act 2006* Sch. 2 cl. 13 a reference to the Consolidated Fund may, where the context so requires, be read as if it had been amended to be a reference to the Consolidated Account. This reference was changed under the *Reprints Act 1984* s. 7(5)(a).
- ³ Repealed by the *Children and Community Services Act 2004* s. 250.