



Western Australia

Community Services Act 1972

**Community Services (Child Care)
Regulations 1988**

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Western Australia

Community Services (Child Care) Regulations 1988

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Western Australia

Community Services Act 1972

Community Services (Child Care) Regulations 1988

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Community Services (Child Care) Regulations 1988*¹.

2. Commencement

These regulations shall come into operation on the coming into operation of the *Acts Amendment (Child Care Services) Act 1987*¹.

3. Interpretation

In these regulations, unless the contrary intention appears —

“**child care premises**” means premises specified in a licence or permit as premises in which a child care service may be provided;

“**child care service**” does not include an “outside school hours care service” as defined in the *Community Services (Outside School Hours Care) Regulations 2002*;

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“contact staff”, in relation to a child care service, means staff members who are directly involved in caring for children attending the service;

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

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

“family day care” means a child care service provided to a child in a private dwelling in a family or domestic environment;

“licence” means a licence under section 17B;

“licensee” means the holder of a licence;

“licensing officer” means —

- (a) a person appointed as a licensing officer under regulation 21(1); or
- (b) a person referred to in regulation 21(3) or (4);

“lunch period” means a period not exceeding 3 hours in any day during which contact staff are permitted to have lunch breaks;

“occupier” means the person by whom premises are actually occupied or, if there is no such person, the person entitled to possession of the premises;

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

“permit” means a permit under section 17B;

“premises” includes land, a building or part of a building, place, caravan, trailer, or carriage;

“prescribed offence” means —

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

“section” means a section of the Act;

“staff member” means a member of the staff of a child care service.

[Regulation 3 amended in Gazette 12 Jul 1991 p. 3428; 13 Feb 2001 p. 873; 28 Aug 2002 p. 4437; 25 Nov 2003 p. 4758.]

4. **Saving**

Except as specifically provided, nothing in these regulations shall be construed as limiting the operation of local laws made under the *Health Act 1911* or the *Local Government Act 1995* or as affecting any lawful requirement of the Chief Officer of Fire Brigades appointed under the *Fire Brigades Act 1942*.

[Regulation 4 amended in Gazette 13 Feb 2001 p. 874.]

Part 2 — Licences and permits

5. Who may apply

A natural person who has attained the age of 21 or a body corporate is eligible to apply for and obtain a licence or permit.

6. Application

- (1) An application for a licence or permit shall be made to the Director-General.
- (2) The application shall be made in a form approved by the Director-General and shall contain —
 - (a) the full name and all known former names of the applicant;
 - (b) the postal address and telephone number of the applicant;
 - (c) the residential address and duration of residence of the applicant;
 - (d) the date and place of birth of the applicant;
 - (e) details of experience and training relevant to the application;
 - (f) details relating to the health of the applicant;
 - (g) details of any child care service previously operated by the applicant;
 - (h) the address of the premises where the child care service is to operate;
 - [(i) deleted]*
 - (j) details of any conviction of the applicant for a prescribed offence if the conviction occurred after the issue of the criminal record check mentioned in subregulation (5)(aa); and
 - (k) such other information as the Director-General may require.

- (3) In the case of an application by a body corporate, department of the Public Service or public authority, the information mentioned in subregulation (2) shall be provided by the officer of that body, department or authority who is likely to be directly responsible for the effective supervision of the child care service and the references mentioned in subregulation (5)(a) and criminal record check mentioned in subregulation (5)(aa) shall be with respect to that officer.
- (4) An applicant shall, after lodging an application for a licence, cause to be published twice, at an interval of not less than 7 nor more than 14 days, in an edition of the *West Australian* newspaper circulating in the district in which the child care service is proposed to be located, a notice of application for a licence and the first such publication shall be made within 28 days of the date of lodgement of the application.
- (4aa) In the case of an application by a body corporate, department of the Public Service or public authority, the notice referred to in subregulation (4) shall include the full name of the officer of that body, department or authority who is likely to be directly responsible for the effective supervision of the child care service.
- (4a) The Director-General shall not grant a licence until he or she has received proof that the applicant for the licence has complied with subregulation (4) and, if the applicant is a body corporate, department of the Public Service or public authority, subregulation (4aa).
- (5) An application for a licence or permit shall be accompanied by —
 - (a) subject to subregulation (6), the name, address and telephone number of —
 - (i) a referee who has had experience in child care;
 - (ii) a referee who is a prior employer or who has worked with the applicant in a paid or unpaid capacity; and

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- (iii) a referee of good standing or status in the community who can attest to the good character of the applicant,
and a statement indicating the circumstances and length of time for which each referee has known the applicant;
- (aa) a criminal record check in respect of the applicant issued not more than 6 months before the day on which the application is made;
- (b) in the case of an application for a licence or permit for family day care, particulars of any group of family day care services organized and supported by a central coordinating body to which the applicant proposes to be identified or by which the applicant proposes to be supported;
- (c) where the application relates to a child care service to be located at existing premises —
 - (i) a site plan, drawn to a scale of not less than 1:500 showing the location of every building on the land comprising the premises; and
 - (ii) a plan drawn to a scale of not less than 1:100 showing the use to which each part of any building or buildings will be put;and
- (d) where the application relates to a child care service to be located at premises which are to be modified or constructed —
 - (i) a copy of all working drawings and specifications;
 - (ii) a plan drawn to a scale of not less than 1:100 showing the use to which each part of any building or buildings will be put;
 - (ia) a certificate signed by a registered architect (as defined in the *Architects Act 1921*) certifying

- that the proposed modification or construction complies with the requirements of Part 4;
- (iii) evidence of the approval of the relevant local government of the proposed modification or construction; and
 - (iv) except if the application relates to family day care, evidence that the proposed modification or construction complies with any relevant fire safety requirements of the Fire and Emergency Services Authority of Western Australia established by the *Fire and Emergency Services Authority of Western Australia Act 1998*.
- (5a) Where an application for a licence or permit relates to a child care service to be located at premises which are to be modified or constructed, the Director-General may require the applicant to provide a site plan, drawn to a scale of not less than 1:500, showing the location of every building or proposed building on the land comprising the premises.
- (6) A referee shall not be related, married or related by marriage to the applicant, or living with the applicant in a de facto relationship.
- [Regulation 6 amended in Gazette 12 Jul 1991 p. 3428; 15 Mar 1996 p. 982; 13 Feb 2001 p. 874-5; 30 Jun 2003 p. 2596.]*

7. **Objections**

- (1) Any person may object in writing to the grant or renewal of a licence or the grant of a permit on the grounds that the applicant or any other person who is or will be responsible for the effective supervision of the child care service is not a fit and proper person to hold a licence or permit or is incapable of providing the child care service in accordance with the regulations or, in the case of a permit, with the permit.

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- (2) In making a decision in relation to an application for a licence or permit or for renewal of a licence the Director-General shall give consideration to any objections made in accordance with subregulation (1).

7A. Approval to provide relief family day care

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

[Regulation 7A inserted in Gazette 12 Jul 1991 p. 3428; amended in Gazette 15 Mar 1996 p. 982; 13 Feb 2001 p. 875; 30 Jun 2003 p. 2596.]

8. Approval of plans

The Director-General may, at the request of an applicant, indicate that plans submitted with an application for a proposed child care service comply with the regulations and note his approval of the plans but such approval does not operate as a licence or permit.

9. Proceedings before Director-General

- (1) In determining any application or matter under the Act the Director-General —
 - (a) shall act with as little formality as is practicable;
 - (b) is not bound by the rules of evidence but may inform himself on any question that arises for decision in such manner as the Director-General thinks fit;
 - (c) may conduct or arrange such hearings, meetings, consultations, and negotiations as the Director-General thinks fit, at such times and places as the Director-General thinks fit; and
 - (d) may receive and consider such submissions as the Director-General thinks fit.
- (2) Subject to these regulations the Director-General may determine his own procedure.

10. Assessment of applicant

- (1) A person is a fit and proper person for the purposes of section 17B(3)(a) if the Director-General is satisfied that —
 - (a) that person is capable of providing an adequate standard of child care;
 - (b) that person is of good character and is suitable to be entrusted with the care of children;
 - (c) that person understands the needs of children; and
 - [(d) deleted]*
 - (e) where that person intends to work in the child care service, the person complies with the requirements of the regulations applicable to staffing.
- (2) A person is not a fit and proper person for the purposes of section 17B(3)(a) if the Director-General is satisfied that the person has at any time been convicted of a prescribed offence

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unless the Director-General, in special circumstances, otherwise determines.

[Regulation 10 amended in Gazette 13 Feb 2001 p. 876.]

11. Issue of permit subject to conditions

Before issuing a permit subject to conditions the Director-General shall, as far as is practicable, seek the approval of the applicant to those conditions.

12. Licence or permit

- (1) A licence or a permit authorises the person to whom it has been issued, subject to the Act and any conditions specified in the permit, to provide a child care service for the number of children specified in the licence or permit and to use such premises as are specified in the licence or permit for the provision of a child care service so long as the child care service and those premises are under the effective supervision of the licensee or permit holder.
- (2) A licence or a permit is not transferable and shall not vest by operation of law in any other person.
- (3) A permit may not be renewed but nothing in these regulations shall prevent a person who holds, or has held, a permit from applying for a further permit.

[Regulation 12 amended in Gazette 12 Jul 1991 p. 3434.]

13. Renewal of licence

- (1) A licence may be renewed upon application being made to the Director-General on a form approved by the Director-General.
 - (1a) An application under subregulation (1) shall be accompanied by a criminal record check in respect of the licensee issued not more than 6 months before the day on which the application is made.

- (2) A licence which is suspended may be renewed without affecting the suspension, which suspension will continue until it is removed or the licence is revoked or cancelled or expires.

[(3) repealed]

- (4) Where an application is lodged under subregulation (1) the Director-General shall renew the licence unless the Director-General —
- (a) is no longer satisfied as to the matters mentioned in section 17B(3); or
 - (b) is of the opinion that the licensee has been or is guilty of any default or misconduct which has impaired or would impair the provision of the child care service to which the licence relates.

*[Regulation 13 amended in Gazette 12 Jul 1991 p. 3428;
13 Feb 2001 p. 876.]*

14. Cancellation, suspension or refusal to renew

- (1) Subject to subregulation (5), before refusing to renew a licence or cancelling or suspending a licence or permit the Director-General shall give 21 days written notice to the licensee or permit holder specifying the grounds upon which he proposes to refuse to renew the licence or to cancel or suspend the licence or permit.
- (2) A person notified under subregulation (1) may, within 21 days of receipt of the notice, apply to the Director-General for a review of the proposed decision.
- (3) On receipt of an application under subregulation (2) the Director-General shall give the applicant an opportunity of making submissions on the matter and, having regard to the matters specified in regulation 13(4) or section 17B(6), as the case requires, either confirm or vary the refusal, cancellation or suspension.

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- (4) Subject to subregulation (5), the Director-General shall not refuse to renew a licence or cancel or suspend a licence or permit unless the period of 21 days notice referred to in subregulation (1) has expired and no application has been lodged under subregulation (2).
- (5) Notwithstanding subregulations (1) and (4), the Director-General may suspend a licence or permit at any time without notice if he is satisfied that the continuation of the licence or permit would expose a child to the imminent risk of serious harm.
- (6) Where a licence or permit is suspended under subregulation (5) the Director-General shall provide written notice of the grounds for suspension to the holder of that licence or permit as soon as practicable and subregulations (2) and (3) shall then apply with respect to the suspension.

[Regulation 14 amended in Gazette 12 Jul 1991 p. 3428 and 3434.]

15. Use of premises upon cancellation or suspension

Where the Director-General has suspended or cancelled a licence or permit, the Director-General may in writing authorise another person for such period as the Director-General thinks fit to use any premises referred to in the licence or permit for the provision of the service to which the licence or permit relates, and a person so authorised shall for the purposes of the Act be deemed to be the licensee or permit holder according to the tenor of such authorisation.

[Regulation 15 amended in Gazette 12 Jul 1991 p. 3434.]

16. Officers of corporate licences etc., to be approved

- (1) Subject to subregulation (3), no person shall, after the grant of a licence or permit to a body corporate, department of the Public Service or a public authority, be an officer of that body, department or authority who is directly responsible for the

effective supervision of the child care service to which the licence or permit relates unless that person has first been approved by the Director-General as being a fit and proper person to be so responsible, and that approval continues in force.

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

- (1a) A person who applies to the Director-General for an approval under subregulation (1) shall cause notice of the application to be published twice, at an interval of not less than 3 nor more than 7 days, in an edition of the *West Australian* newspaper circulating in the district in which the child care service is provided, and the first such publication shall be made within 7 days after the day on which the application is made.
- (1b) The Director-General shall not give an approval under subregulation (1) until he or she has received proof that the person applying for the approval has complied with subregulation (1a).
- (2) The Director-General may revoke an approval given under subregulation (1) if the Director-General ceases to be satisfied that the person is a fit and proper person to be responsible for the effective supervision and control of a child care service.
- (3) Subregulation (1) does not apply to an officer until the expiration of 28 days after the officer becomes directly involved in the provision of the child care service.

[Regulation 16 amended in Gazette 13 Feb 2001 p. 876.]

16A. Objections to approval

- (1) Any person may object in writing to the giving of an approval under regulation 16(1) on the grounds that the person who has applied for the approval is not a fit and proper person to be directly responsible for the effective supervision of the child care service.

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- (2) In making a decision in relation to an application for an approval under regulation 16(1), the Director-General shall give consideration to any objections made in accordance with subregulation (1).

[Regulation 16A inserted in Gazette 13 Feb 2001 p. 877.]

17. Duty to notify of change of circumstances

Where —

- (a) the licensee ceases to be the occupier of any premises to which a licence relates;
- (b) in the case of a body corporate, department of the Public Service or public authority, an officer approved under regulation 16 ceases to be responsible for the effective supervision of the child care service;
- (c) the licensee leaves or proposes to leave the State for more than 14 days;
- (d) the licensee proposes to modify or construct any premises to which a licence relates;
- (da) the licensee or permit holder or, in the case of a body corporate, department of the Public Service or public authority, an officer approved under regulation 16, is convicted of a prescribed offence; or
- (e) the licensee or permit holder is aware of any change to any fact or circumstance relating to or affecting the provision of the child care service the subject of the licence or permit,

the holder of the relevant licence or permit shall forthwith advise the Director-General in writing.

Penalty: \$1 000 and a daily penalty of \$50.

[Regulation 17 amended in Gazette 12 Jul 1991 p. 3429 and 3434; 13 Feb 2001 p. 877.]

17A. Licensee absent from State

- (1) Where a licensee is to be absent from the State for a period exceeding 14 days but not exceeding 6 months, the Director-General may in writing authorise another person, for that period, to use any premises referred to in the licence for the provision of a child care service to which the licence relates.
- (2) The Director-General shall not authorise a person under subregulation (1) unless the Director-General is satisfied that the person would be qualified to be issued with the licence in terms of section 17B(3)(a) and (b).
- (3) A person authorised under subregulation (1) shall for the purposes of the Act be deemed to be the licensee according to the tenor of the authorisation.

[Regulation 17A inserted in Gazette 13 Feb 2001 p. 877.]

18. Surrender of licences, etc.

- (1) The holder of a licence or permit may at any time by notice in writing to the Director-General surrender the licence or permit and upon surrender the licence or permit shall cease to have effect.
- (2) Where the holder of a licence or permit dies or becomes bankrupt or, in the opinion of the Director-General, incapable of providing the child care service to which the licence or permit relates the holder of the licence or permit shall be deemed to have surrendered the licence or permit.
- (2a) Where a licensee is absent from the State for a period exceeding 6 months, the licensee shall be deemed to have surrendered the licence.
- (3) Where subregulation (1), (2) or (2a) applies the Director-General may in writing authorise another person, for a period not exceeding 3 months, to use any premises referred to in the licence or permit for the provision of the child care service to which the licence or permit relates and a person so

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authorised shall for the purposes of the Act be deemed to be the licensee or permit holder according to the tenor of such authorisation.

[Regulation 18 amended in Gazette 12 Jul 1991 p. 3429 and 3434; 13 Feb 2001 p. 878.]

19. Reasons for decision

- (1) A person —
- (a) who has been refused the grant or renewal of a licence;
 - (b) who has been refused the grant of a permit; or
 - (c) whose permit is subject to conditions,

may request the Director-General to give reasons for refusing the grant or renewal or for imposing the conditions, as the case may be.

- (2) The Director-General shall, if requested to give reasons under subregulation (1), provide such reasons in writing within 21 days of receipt of such request.

20. False statements

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

Penalty: \$1 000.

21. Licensing officers

- (1) The Director-General may appoint licensing officers for the purposes of enforcing the Act with respect to child care services.
- (2) The Director-General shall not appoint an employee of the Department whose function is the delivery of advice or support services to the providers of children's services and, in particular, child care services as a licensing officer.

[(3)-(5) repealed]

- (6) Every licensing officer shall be furnished with a certificate of appointment which in any proceedings shall be *prima facie* evidence of appointment, and, on entering any premises in the course of duty, the licensing officer shall produce the certificate to the person in charge of the premises.

[Regulation 21 amended in Gazette 25 Nov 2003 p. 4758.]

22. Display of licence

- (1) The holder of a licence or permit shall cause his or her licence or permit to be displayed in a prominent position at or near the main entrance to the premises in which the child care service to which it relates is operated.
- (2) A person who alters or defaces, or attempts to alter or deface a licence or permit commits an offence.

Penalty: \$1 500 and a daily penalty of \$30.

[Regulation 22 amended in Gazette 12 Jul 1991 p. 3429.]

23. Exemption from regulations

- (1) The Director-General may in special circumstances in particular cases exempt in writing holders of licences and permits from compliance with specified regulations in Parts 3 and 4 for a specified period of time.
- (2) The Director-General may renew or revoke an exemption under subregulation (1).
- (3) An exemption under subregulation (1) may be given so as to operate only so long as specified circumstances apply or any specified condition is complied with, and if those circumstances cease to apply or any condition is not complied with the exemption ceases to operate.
- (4) In this regulation “**specified**” means specified in the exemption.

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24. Exercise of discretion by Director-General

In the exercise of his discretion under these regulations the Director-General shall have regard to —

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

25. Fees

The fees to be paid in respect of an application for, or issue of, a licence or permit are those fees that may from time to time be determined by the Minister and published in the *Gazette*.

Part 3 — Staffing

26. Compliance with this Part

- (1) A licensee or permit holder shall ensure that —
 - (a) the number of children enrolled in the child care service;
 - (b) the number of children present on child care premises;
 - (c) the number of contact staff caring for children on child care premises; and
 - (d) the qualifications of, and other requirements relating to, contact staff employed in the child care service,

of that licensee or permit holder are in accordance with this Part.

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

- (2) Each licensee or permit holder shall comply with the requirements of this Part that apply to that person.

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

*[Regulation 26 amended in Gazette 12 Jul 1991 p. 3429;
13 Feb 2001 p. 878.]*

27. Pre-school children

- (1) Subject to subregulation (1a) and regulation 29, the number of children of pre-school age at any time on child care premises shall not exceed the number of children specified in the licence or permit.
- (1a) Notwithstanding subregulation (1), the number of children of pre-school age on child care premises licensed for family day care may exceed the number specified in the licence or permit if the children who are not the licensee's own children or children for whom the child care service is provided —
 - (a) are present on an occasional or casual basis;
 - (b) are in the care of another person or other persons; and

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- (c) where they are in the care of another licensee of a family day care service, are supervised by that licensee in accordance with the terms and conditions of the relevant licence or permit.
- (2) A licence or permit for family day care shall not be issued for more than 5 children of pre-school age, including the children of the licensee or permit holder.
- (2a) Where a licence or permit for family day care is issued for 5 children of pre-school age, at least one of those children is to be a child who attends a pre-primary programme at a pre-primary centre or pre-school centre within the meaning of the *Education Act 1928*².
- (3) Notwithstanding subregulation (2), where on the coming into operation of these regulations a person holds a licence or permit under section 118A³ of the *Child Welfare Act 1947* to care for 5 children between the ages of 3 and 6 years in family day care that person may continue to care for 5 children in accordance with the licence or permit and the Act until the licence or permit is surrendered or cancelled.
- (4) In subregulation (1a) “**licensed**” includes authorised under a permit and “**licensee**” shall be construed accordingly.

[Regulation 27 amended in Gazette 12 Jul 1991 p. 3429;
15 Mar 1996 p. 982-3.]

28. Children of school age

- (1) Children of school age may be present at child care premises, other than premises licensed for family day care, if —
 - (a) the total number of children present at any time does not exceed the number of children for which the service is licensed or for which a permit has been issued; and
 - (b) the staffing and other requirements of these regulations are met for the total number of children in the child care service at any time.

- (2) Children of school age shall not be present at child care premises licensed for family day care except where —
- (a) the total number of children under 12 years in the care of the licensee does not exceed 7, including the licensee's own children; or
 - (b) if the total number of children under 12 years in the care of the licensee exceeds 7, including the licensee's own children, those children who are not the licensee's own children or children for whom the child care service is provided —
 - (i) are not being cared for in return for payment or reward;
 - (ii) are present on an occasional or casual basis;
 - (iii) are adequately supervised by the licensee; and
 - (iv) do not detrimentally affect the best interests of the children for whom the child care service is provided.
- (3) In this regulation “**licensed**” includes authorised under a permit and “**licensee**” shall be construed accordingly.

[Regulation 28 amended in Gazette 12 Jul 1991 p. 3429.]

29. More children than specified in licence or permit

- (1) Subject to subregulation (2), up to 25% more children than the number specified in a licence or permit may be present on premises specified in that licence or permit for a period that does not, or periods that do not in total, exceed one hour in any day if —
- (a) staff/child ratios are maintained in accordance with these regulations; and
 - (b) the public liability insurance of the licensee or permit holder in respect of the child care service is valid during any such period.

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- (2) Subregulation (1) does not apply to premises specified in a licence or permit for family day care.

[Regulation 29 inserted in Gazette 15 Mar 1996 p. 983.]

30. Minimum contact staff requirements

- (1) Subject to subregulation (3) and to regulations 28, 30A and 34, the minimum number of contact staff required for children in an age group specified in the Table to this subregulation, and the minimum qualifications of those staff, are as specified in that Table.

Table

| Age group of children | Staff to child ratio | Number of children | Staff requirements |
|--|-----------------------------|---------------------------|---------------------------|
| 0-24 months | 1:4 | 1-4 | 1A*/B*/C |
| | | 5-8 | 1A*/B*/C +1D |
| | | 9-12 | 1A*/B*/C +2D |
| 18-36 months <i>(At least 70% of children 24 months or older)</i> | 1:5 | 1-5 | 1E |
| | | 6-10 | 1A/B/C +1D |
| | | 11-15 | 1A/B/C +2D |
| 24-36 months | 1:5 | 1-5 | 1D |
| | | 6-10 | 1A/B/C +1D |
| | | 11-15 | 1A/B/C +2D |
| 30 months or older <i>(At least 70% of children 36 months or older)</i> | 1:10 | 1-10 | 1E |
| | | 11-20 | 1A/B/C +1D |
| | | 21-30 | 1A/B/C +2D |
| 36 months or older | 1:10 | 1-10 | 1D |
| | | 11-20 | 1A/B/C +1D |
| | | 21-30 | 1A/B/C +2D |

- (2) In the Table to subregulation (1) —
- (a) A represents the holder of —
 - (i) a degree or diploma in early childhood care or early childhood education from a recognised Australian university or other tertiary institution; or
 - (ii) an equivalent qualification as determined by the Director-General;
 - (b) A* represents the holder of —
 - (i) a qualification referred to in paragraph (a) which includes a specialist course on the principles and practices of the care and education of children in the 0-24 months age group, in addition to practical experience of 100 hours (minimum) with that age group; or
 - (ii) an equivalent qualification as determined by the Director-General;
 - (c) B represents the holder of —
 - (i) a 2 year certificate in child care studies;
 - (ii) a diploma or associate diploma in child care; or
 - (iii) an equivalent qualification as determined by the Director-General;
 - (d) B* represents the holder of —
 - (i) a qualification referred to in paragraph (c) which includes a specialist course on the principles and practices of the care and education of children in the 0-24 months age group, in addition to practical experience of 100 hours (minimum) with that age group; or
 - (ii) an equivalent qualification as determined by the Director-General;
 - (e) C represents a person who is —
 - (i) a registered mothercraft nurse;

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- (ii) the holder of a mothercraft nursing qualification;
or
 - (iii) the holder of an equivalent qualification as determined by the Director-General;
- (f) D represents a person who is not the holder of a qualification referred to in paragraphs (a) to (e);
- (g) E represents a person who has reached 18 years of age and who —
 - (i) has at least 2 years' experience of working in an early childhood setting;
 - (ii) is the holder of Certificate III in Community Services (Children's Studies); or
 - (iii) is the holder of an equivalent qualification as determined by the Director-General.
- (3) Subregulation (1) does not apply to premises specified in a licence or permit for family day care.

[Regulation 30 inserted in Gazette 13 Feb 2001 p. 879-80⁴.]

30A. Contact staff arrangements during lunch period

- (1) The requirements in regulation 30(1) do not apply during a lunch period if at all times during that period —
 - (a) the number of contact staff is at least 60% of the total number of contact staff required under regulation 30(1);
 - (b) children in the 0-24 months age group are supervised by at least one staff member who has a qualification referred to in regulation 30(2)(a), (c), (e) or (g);
 - (c) no staff member under 18 years of age supervises more than 10 children; and
 - (d) in the case of a child care service licensed for 30 or more child care places, at least one of the contact staff present has a qualification referred to in regulation 30(2)(a), (c) or (e).

- (2) In subregulation (1)(d) —
“**licensed**” includes authorised under a permit.
[Regulation 30A inserted in Gazette 13 Feb 2001 p. 880.]

31. Support staff

- (1) Where a child care service provides meals prepared on the premises on a regular basis for 20 or more children the licensee or permit holder shall employ a person to prepare meals.
- (1a) A licensee or permit holder shall ensure that a person employed under subregulation (1) —
- (a) completes a course of training in food handling and hygiene approved by the Director-General within one month after the person is employed; and
 - (b) completes a course of training in nutrition approved by the Director-General within 3 months after the person is employed.
- (2) Persons employed to maintain premises specified in a child care licence or permit or to prepare meals under subregulation (1) are not to be regarded as contact staff for the purposes of regulation 30.

*[Regulation 31 amended in Gazette 12 Jul 1991 p. 3434;
13 Feb 2001 p. 881.]*

32. Coordinator

- (1) Except in family day care, a licensee or permit holder shall act personally, or appoint a person to act as coordinator of the child care service.
- (2) A coordinator shall ensure that a staff member who has contact with the children and has the appropriate qualifications referred to in regulation 30(2)(a), (c) or (e) is responsible for the development and implementation of a programme for the children in the care of the coordinator.

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- (3) A coordinator shall be a person who —
- (a) has attained the age of 21 years; and
 - (b) holds any of the qualifications referred to in regulation 30(2)(a), (c) and (e) or, in the opinion of the Director-General, is otherwise suitably qualified or experienced in the fields of child development, administration and staff management.

[Regulation 32 amended in Gazette 12 Jul 1991 p. 3430 and 3434; 15 Mar 1996 p. 984; 13 Feb 2001 p. 881.]

33. Staff under 18 years

In employing contact staff for the purpose of compliance with regulation 30, a licensee or permit holder shall employ at least one staff member over the age of 18 years for each staff member under the age of 18 years employed in the child care service of that licensee or permit holder.

[Regulation 33 inserted in Gazette 12 Jul 1991 p. 3430; amended in Gazette 13 Feb 2001 p. 882.]

34. Additional staff

The Director-General may require a licensee or permit holder to employ contact staff in addition to those required under regulation 30 where the special needs of one or more children attending the child care service at a particular time require such additional staff.

[Regulation 34 amended in Gazette 12 Jul 1991 p. 3434; 13 Feb 2001 p. 882; 25 Nov 2003 p. 4758.]

35. Supervision

- (1) Where there are not more than 4 children in attendance at a child care service the licensee or permit holder shall ensure that the children are supervised by at least one person over the age of 18 years.

- (2) Where a child care service is supervised by one person over the age of 18 years the licensee or permit holder shall ensure that there is at least one other person over the age of 18 years, whether on the premises or not, available to render assistance in an emergency.
- (3) Except in family day care, where there are 5 or more children in attendance at a child care service, the licensee or permit holder shall ensure that the children are supervised by at least 2 staff members, one of whom shall be over the age of 18 years or shall have the qualifications described in regulation 30(2)(a), (c) or (e).

[Regulation 35 amended in Gazette 12 Jul 1991 p. 3434; 15 Mar 1996 p. 984; (correction in Gazette 8 Jul 1997 p. 3564); 13 Feb 2001 p. 882.]

36. First aid

- (1) Subject to subregulation (2), a licensee or permit holder shall ensure that a person possessing current first-aid qualifications approved by the Director-General is in attendance at the child care premises of the licensee or permit holder at all times children are attending a child care service on those premises.
- (2) Notwithstanding subregulation (1), a family day care service may be supervised on an emergency basis by a person who does not possess current first-aid qualifications if the licensee or permit holder for that family day care service provides the emergency care giver with a clear, written emergency procedure before supervision commences.

[Regulation 36 inserted in Gazette 12 Jul 1991 p. 3430-1; amended in Gazette 13 Feb 2001 p. 882.]

37. Health certificate

- (1) A licensee or permit holder shall ensure that a person who —
 - (a) is employed in the child care service of that licensee or permit holder; and

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- (b) has contact with children attending that service, provides that licensee or permit holder with a medical certificate, including a tuberculosis clearance, in a form approved by the Director-General, within 14 days of commencing employment in the child care service.
- (1a) In addition to the requirement in subregulation (1), a licensee or permit holder shall ensure that a person referred to in that subregulation provides that licensee or permit holder with a tuberculosis clearance at intervals of not more than 2 years.
- (2) A licensee or permit holder shall, upon a written request by the Director-General, provide the Director-General with a medical certificate in a form approved by the Director-General within the time specified in the request.

[Regulation 37 inserted in Gazette 12 Jul 1991 p. 3431; amended in Gazette 13 Feb 2001 p. 882.]

37A. Criminal record check

- (1) A licensee or permit holder shall require each staff member to produce to the licensee or permit holder a current criminal record check in respect of the staff member within the period described in subregulation (2) and thereafter at intervals of not more than 2 years.
- (2) For the purposes of subregulation (1) the period is —
 - (a) in the case of an existing staff member, 6 months after the relevant day; and
 - (b) in the case of a new staff member, 30 days after the person is employed in the child care service.
- (3) The Director-General may request the production of a current criminal record check in respect of a staff member, and the licensee or permit holder for the child care service concerned shall ensure that the request is complied with within 30 days after it is made.

(4) In this regulation —

“**current criminal record check**” means a criminal record check issued not more than 2 years before the day on which it is produced;

“**existing staff member**” means a staff member employed before the relevant day;

“**new staff member**” means a staff member employed on or after the relevant day;

“**relevant day**” means the day on which the *Community Services (Child Care) Amendment Regulations 2001*¹ came into operation.

[Regulation 37A inserted in Gazette 13 Feb 2001 p. 883.]

37B. Employment of person convicted of prescribed offence

(1) A licensee or permit holder shall not employ a convicted person in the child care service of that licensee or permit holder unless the employment of the convicted person is approved by the Director-General.

(2) It is a defence in proceedings for an offence under regulation 26 in respect of a failure to comply with subregulation (1) to show that the licensee or permit holder did not know, and could not reasonably have known, that the person employed was a convicted person.

[Regulation 37B inserted in Gazette 13 Feb 2001 p. 883.]

38. Outings

(1) A licensee or permit holder shall ensure that on outings from the child care premises of the licensee or permit holder —

(a) the licensee, permit holder or a responsible staff member over the age of 18 years is in charge of the children; and

(b) unless subregulation (1a) applies or the children are travelling in an A class motor vehicle as referred to in subregulation (2), the person referred to in paragraph (a) has the care of not more than 4 children.

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- (1a) On outings from premises specified in a licence for family day care, the licensee shall ensure that —
- (a) the licensee has the care of not more than 7 children under the age of 12 years;
 - (b) not more than 5 of the children are of pre-school age; and
 - (c) where 5 of the children are of pre-school age, at least one of those children is a child who attends a pre-primary programme at a pre-primary centre or pre-school centre within the meaning of the *Education Act 1928*².
- (2) Notwithstanding subregulation (1)(b) where children are travelling in an A class motor vehicle seating no more than 8 people and fitted with seat belts for each person, 7 children may travel under the supervision of the person referred to in subregulation (1)(a).
- (3) Volunteers over the age of 18 years may be used to augment adult:child ratios on outings.
- (4) A licensee or permit holder shall ensure that on outings from the child care premises of the licensee or permit holder —
- (a) where the children are not in a vehicle they are, depending on their age, appropriately restrained in a pram or stroller or by other suitable means; and
 - (b) where the children are in an A class motor vehicle they are restrained by a seat belt or safety capsule.

[Regulation 38 inserted in Gazette 12 Jul 1991 p. 3431; amended in Gazette 15 Mar 1996 p. 984-5.]

39. Swimming

- (1) Where children in a child care service are taken on a swimming outing, the licensee or permit holder shall ensure that a ratio of 1 adult: 1 child under 3 years of age and 1 adult: 2 children over 3 years of age is maintained.

- (2) At least one of the adults in charge of children swimming shall have a current basic rescue certificate and a resuscitation certificate or its equivalent.

[Regulation 39 amended in Gazette 12 Jul 1991 p. 3431.]

Part 4 — Buildings and physical environment

40. Compliance with requirements

A licensee or permit holder shall ensure that the child care premises specified in the licensee's licence or the permit holder's permit, as the case may be, comply with this Part.

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

[Regulation 40 inserted in Gazette 12 Jul 1991 p. 3431; amended in Gazette 13 Feb 2001 p. 884.]

40A. Premises not to be used as a residence

Except in family day care, child care premises, or any part of child care premises, shall not be used as a residence.

[Regulation 40A inserted in Gazette 13 Feb 2001 p. 884.]

41. Outdoor space requirement

- (1) Subject to subregulation (2), there shall be a minimum of 9.3 square metres of outdoor space suitable for children's play for each child present on child care premises.
- (2) The Director-General may waive the outdoor space requirement specified in subregulation (1) if—
 - (a) the outdoor space is augmented by access to at least an equivalent area of playing space within walking distance for a child;
 - (b) the outdoor space is augmented by a larger indoor space suitable for children's play; or
 - (c) no child attends the child care service for more than 20 hours in any week.

[Regulation 41 amended in Gazette 13 Feb 2001 p. 884.]

41A. Shade

Outdoor space required under regulation 41 shall be provided with adequate shade in accordance with guidelines approved by the Director-General.

[Regulation 41A inserted in Gazette 13 Feb 2001 p. 884.]

42. Fencing

- (1) Child care premises shall be enclosed by a fence, or an equivalent approved by the Director-General, of not less than 1 200 mm in height.
- (1a) A gate in a fence, or in an equivalent, referred to in subregulation (1) shall not be less than 1 200 mm in height.
- (2) A gate in a fence on child care premises that offers access from the premises or to a hazard shall be equipped with an efficient self-locking mechanism or lock.
- (3) Subject to subregulation (3a), a swimming pool on child care premises shall be separated from all other parts of the premises, including outdoor playing space, by an enclosure that satisfies the requirements of Part 10 of the *Building Regulations 1989*.
- (3a) Where an enclosure surrounding a swimming pool consists in part of a door or window permitting access to the enclosed area, the door or window —
 - (a) shall be locked; or
 - (b) shall be otherwise secured,in a manner approved by the Director-General, when children are present on the child care premises.
- (4) Child care premises that are adjacent to or provide access to any creek, river, dam or similar body of water shall be separated from that body of water by a fence that conforms with the requirements of subregulations (1) and (2).

[Regulation 42 amended in Gazette 12 Jul 1991 p. 3431; 15 Mar 1996 p. 985; 13 Feb 2001 p. 884.]

43. Indoor space requirements

- (1) There shall be a minimum of 3.25 square metres of indoor space suitable for children's play for each child, and an additional one square metre for each child aged from 0 to 2 years present on child care premises.
- (1a) When calculating the area of indoor space for the purposes of subregulation (1), the area of any built-in cupboard, bench, passageway, thoroughfare, kitchen, laundry, bathroom, toilet or shower is not to be taken into account.
- (2) Where on the coming into operation of these regulations premises are licensed under the *Child Welfare (Care Centres) Regulations 1968*⁵ made under the *Child Welfare Act 1947* and do not comply with the requirements of subregulation (1) of this regulation, the premises shall for the purposes of these regulations be taken to comply with the requirements of subregulation (1) until the licence is surrendered or cancelled.

*[Regulation 43 amended in Gazette 15 Mar 1996 p. 985;
13 Feb 2001 p. 885.]*

44. Staff room

- (1) Except in family day care, child care premises shall —
 - (a) include an area separate from areas used by children and suitable for the withdrawal or respite of staff members;
or
 - (b) have access to an area that is suitable for the withdrawal or respite of staff members.
- (2) An area referred to in subregulation (1)(a) or (b) shall have not less than 7.5 square metres of useable space.
- (3) The requirement in subregulation (2) does not apply to child care premises specified in a licence or permit in force on the commencement of the *Community Services (Child Care)*

*Amendment Regulations 2001*¹ while that licence or permit remains in force.

[Regulation 44 inserted in Gazette 12 Jul 1991 p. 3432; amended in Gazette 15 Mar 1996 p. 985; 13 Feb 2001 p. 885.]

44A. Area for administration etc.

Except in family day care, child care premises shall —

- (a) include an area separate from areas used by children or required under regulation 44; or
- (b) have access to an area separate from an area required under regulation 44,

that is suitable for administrative activities and private consultations with parents.

[Regulation 44A inserted in Gazette 15 Mar 1996 p. 986.]

45. Kitchen

- (1) Child care premises shall include a kitchen with at least a sink, stove, refrigerator and supply of hot water.

[(2)-(7) repealed]

[Regulation 45 amended in Gazette 13 Feb 2001 p. 885.]

46. Laundry

- (1) Subject to subregulation (1a), child care premises shall include a laundry area.
- (1a) Subregulation (1) does not apply if —
 - (a) no child attends the child care service provided in the child care premises for more than 20 hours in any week; or
 - (b) arrangements approved by the Director-General have been made for treating laundry away from the child care premises and for the hygienic storage of soiled laundry.

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- (2) A laundry shall include a washing machine, trough, hot water supply and sink or other facility suitable for dealing with soiled napkins.
- (3) Where napkins are not laundered on the premises, a suitable sealed container for soiled napkins shall be provided.

*[Regulation 46 amended in Gazette 12 Jul 1991 p. 3432;
13 Feb 2001 p. 885.]*

47. Windows and glazing

- (1) Any glazed area on the premises of a family day care service that is accessible to children and that is less than 750 mm above floor level shall be —
 - (a) fitted with safety glass in accordance with Australian Standard 1288-1994 “Glass in buildings — Selection and installation”; or
 - (b) effectively guarded by rails or barriers to prevent a child striking or falling against the glass.

- (2) Windows, when opened, shall not create a hazard to children.

[Regulation 47 amended in Gazette 13 Feb 2001 p. 886.]

48. Storage

- (1) Child care premises shall include shelves or other facilities for indoor and outdoor storage of equipment and consumable items for the use of the child care service and for each child’s personal clothing and possessions.
- (2) Shelves or other facilities provided under subregulation (1) shall be so positioned as to enable children over the age of 3 years to have ready access to their personal clothing and possessions.

[Regulation 48 amended in Gazette 15 Mar 1996 p. 986.]

49. Exits

- (1) Except in family day care, children should be able to open interconnecting doors of rooms they are permitted to use;

- handles shall be positioned between 750 mm — 1 000 mm from the floor.
- (2) Doors giving direct access to the street —
 - (a) shall have handles positioned 1 300 mm — 1 500 mm from the floor; and
 - (b) in family day care, shall be locked in a manner that does not prevent effective evacuation of the premises.
 - (3) There shall be at least 2 exits from each child care premises, as widely separated as practicable and readily accessible.
 - (4) Every room having accommodation for 20 children or less shall have at least one doorway not less than 800 mm wide giving direct access to the outdoor play space or to a thoroughfare or passage giving direct access to outdoor space and every room having accommodation for more than 20 children shall have at least 2 such doorways as widely separated as practicable.

[Regulation 49 amended in Gazette 13 Feb 2001 p. 886.]

50. Bathroom facilities

- (1) In child care premises there shall be —
 - (a) one junior lavatory or one adult lavatory with a firm step and a junior seat; and
 - (b) one hand basin either with a firm step, or at a height so as to provide reasonable child access,for every 15 children or part of that number attending those premises.
- (2) Where children under the age of 3 years are cared for in a child care service the following shall be provided —
 - (a) a changing bench or mat with a washable top; and
 - (b) one sink type bath that is —
 - (i) supplied with hot and cold water; and

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- (ii) positioned adjacent to, or in the case of a family day care service in close proximity to, the changing bench or mat referred to in paragraph (a).
- (3) In addition to the requirements of subregulation (1), in child care premises, other than the premises of a family day care service there shall be at least one adult lavatory and handbasin for every 10 staff members or part thereof.

[Regulation 50 amended in Gazette 12 Jul 1991 p. 3432; 15 Mar 1996 p. 986; 13 Feb 2001 p. 886.]

51. Electrical installations

- (1) Any electrical distribution board or control panel located in a children's play or rest area shall be behind a lockable door and installed at a minimum height of 1 200 mm above the adjacent floor level.
- (2) In a child care service licensed or authorised by permit for 15 or more children, where a passage, stair or ramp does not receive natural lighting either directly or through approved borrowed lights then lighting in the passage, stair or ramp shall be connected over at least 2 circuits, one of which may be that connecting a play or rest room.
- (3) Subject to subregulation (3a), general purpose power outlets shall be installed at a minimum of 1 200 mm above adjacent floor level or alternatively shall be fitted with approved integral safety shutters or with an earth leakage circuit breaker.
- (3a) Notwithstanding subregulation (3), general purpose power outlets on the premises of a family day care service that are not installed at a minimum of 1 200 mm above the adjacent floor level may be fitted with safety plugs approved by the Director-General, or otherwise protected in a manner approved by the Director-General, in lieu of compliance with subregulation (3).

- (4) Where radiant type electrical heaters are used in play and rest rooms they shall be fixed in position and installed so that any part of the heating element is at least 2 130 mm above the floor and at least 300 mm from the ceiling.
- (5) Wall mounted fans shall have approved blade guards and shall be located so that blades are at least 2 000 mm above the floor.
- (6) Ceiling mounted fans shall be located so that blades are at least 2 400 mm above floor level unless children are adequately protected from inadvertent physical contact with the blades.
- (6a) Free standing fans shall be located so that children are adequately protected from inadvertent physical contact with the blades.
- (7) Aerial power supply cables operating at voltages in excess of extra low voltage shall be located so that clearances from mesh fences, gates and similar climbable structures are in accordance with Australian Standard 3000 — 1991 SAA Wiring Rules.
- (8) Cable pits and the like shall be provided with lids which by weight or mechanical means restrict access.

[Regulation 51 amended in Gazette 12 Jul 1991 p. 3432-3; 15 Mar 1996 p. 987; 13 Feb 2001 p. 886; 25 Nov 2003 p. 4758.]

52. Furniture

The licensee or permit holder shall ensure that adequate furniture is available to meet the physical and developmental needs of children attending the child care service.

[Regulation 52 amended in Gazette 12 Jul 1991 p. 3434; 13 Feb 2001 p. 886.]

Part 5 — Health and safety

53. Illness or accident

- (1) The licensee or permit holder shall obtain from the parent of a child, written authority for staff members to seek medical attention for that child if required.
- (2) Except in an emergency, the licensee or permit holder shall ensure that medication is not administered to a child without written authority from a parent of the child specifying the time, quantity and manner of administration of such medication.

[(3) repealed]

- (4) The licensee or permit holder shall refuse to admit to the child care premises any child or other person who is apparently suffering from a communicable disease or condition which might prejudice the health of other children and staff members.
- (5) The licensee or permit holder shall notify a parent of a child of an illness or injury suffered by the child, or an accident involving the child, that occurs while the child is attending the child care service and such notification shall be given on the same day that the illness, injury or accident occurs.

[Regulation 53 amended in Gazette 12 Jul 1991 p. 3434; 15 Mar 1996 p. 987; 13 Feb 2001 p. 887.]

53A. Director-General to be notified of certain matters

- (1) The licensee or permit holder shall notify the Director-General of —
 - (a) the death of a child while attending the child care service and the circumstances in which the death occurred;
 - (b) an injury to a child while attending the child care service that results in the admission of the child to a hospital, and the nature and circumstances of such injury; or
 - (c) any allegation of abuse, neglect or assault, including sexual assault, or of an offence under Chapter 22 of *The*

Criminal Code, in respect of a child attending the child care service made against the licensee or permit holder, a staff member or, in the case of family day care, against a person residing on the premises specified in the licence or permit,

within one working day after the day on which the death or injury occurred or the allegation was made, as the case requires.

- (2) The licensee or permit holder shall notify the Director-General of the outcome of any investigation into an allegation referred to in subregulation (1)(c).
- (3) In subregulation (1) —
“**working day**” means a day that is not a Saturday, Sunday, public holiday or public service holiday.

[Regulation 53A inserted in Gazette 15 Mar 1996 p. 987-8.]

54. First-aid supplies

The licensee or permit holder shall maintain a fully equipped first-aid facility in efficient order on the child care premises in a position that is inaccessible to children.

[Regulation 54 amended in Gazette 12 Jul 1991 p. 3434.]

54A. Hygiene

The licensee or permit holder shall ensure that staff members observe and maintain reasonable standards of hygiene in the provision of the child care service.

[Regulation 54A inserted in Gazette 15 Mar 1996 p. 988.]

55. Departure procedure

- (1) The licensee or permit holder shall ensure that no child attending the child care service is permitted to leave the child care premises unless the child is in the care of —
 - (a) the child’s parent or a person authorised by the child’s parent;

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- (b) a licensee, or permit holder or an adult employee of the child care service who is responsible for the child and who is authorised in writing by the parent to take the child from the child care premises; or
 - (c) in the case of an emergency, when a person referred to in paragraph (a) or (b) is not available to take charge of the child, a person authorised by the licensee or permit holder having due regard to the safety and welfare of the child.
- (2) If a child attending a child care service leaves the child care premises in the circumstances referred to in subregulation (1)(c), the licensee or permit holder of the child care service shall, as soon as is practicable, notify the Director-General of that occurrence.

[Regulation 55 amended in Gazette 12 Jul 1991 p. 3433 and 3434; 15 Mar 1996 p. 988.]

56. Cleanliness, maintenance and repair of premises

The licensee or permit holder shall ensure that —

- (a) the child care premises are kept free from rodents, cockroaches and other vermin; and
- (b) the child care premises and all equipment and furnishings on those premises are maintained in a thoroughly safe, clean and hygienic condition and in good repair.

[Regulation 56 inserted in Gazette 15 Mar 1996 p. 988.]

57. Unsafe equipment

- (1) The licensee or permit holder shall ensure that —
- (a) any child in the care of that licensee or permit holder who is using a wading or paddling pool is under the direct supervision of a person of not less than 18 years of age; and

- (b) when not in use any wading or paddling pool on the child care premises is emptied and stored in such a manner that it cannot collect water.
- (1a) The licensee or permit holder shall ensure that any child in the care of the licensee or permit holder who is using a trampoline is under the direct supervision of a person of not less than 18 years of age.
- (2) The licensee or permit holder shall, at all times premises are used as a child care service, prevent access by any child to any swimming pool on the premises unless in special circumstances the Director-General waives the requirement to comply with this subregulation.
- (3) The licensee or permit holder shall ensure that soft surfaces of a kind approved by the Director-General are provided under and around any outdoor play equipment from which there is a reasonable likelihood of a child falling because of the equipment's design or the manner in which it is used.

[Regulation 57 amended in Gazette 12 Jul 1991 p. 3433 and 3434; 13 Feb 2001 p. 887.]

58. Storage of tools and dangerous materials

The licensee or permit holder shall ensure that —

- (a) tools are stored in a place that is inaccessible to children;
- (b) cleaning supplies, first-aid supplies and other toxic materials are —
 - (i) clearly identified as such; and
 - (ii) stored in a place that is inaccessible to children;
- and
- (c) flammable materials are stored separately from anything that constitutes or is likely to constitute a fire hazard.

[Regulation 58 inserted in Gazette 15 Mar 1996 p. 988-9.]

59. Fire, natural disasters and emergencies

- (1) The licensee or permit holder shall comply with any relevant fire safety requirements of the Fire and Emergency Services Authority of Western Australia established by the *Fire and Emergency Services Authority of Western Australia Act 1998* and shall develop and set down in writing evacuation and emergency procedures in case of fire, natural disaster or other emergencies.
- (1a) The licensee shall ensure that the emergency procedures include specific procedures applicable during lunch periods.
- (2) The licensee or permit holder shall ensure that each staff member is provided with a copy of the emergency procedures.
- (3) The licensee or permit holder shall ensure that a practice of the emergency procedures is conducted at least twice in one year.
- (4) In this regulation —

“emergency procedures” means evacuation and emergency procedures developed under subregulation (1);

“year” means a period of 12 months commencing on 1 July.

[Regulation 59 amended in Gazette 12 Jul 1991 p. 3434; 15 Mar 1996 p. 989; 13 Feb 2001 p. 887.]

59A. Smoke detectors

Every child care premises shall be equipped with smoke detectors that are fitted in accordance with the manufacturer’s instructions.

[Regulation 59A inserted in Gazette 13 Feb 2001 p. 888.]

60. Animals

- (1) Any animal or bird kept on or about the premises shall be maintained by the licensee or permit holder in a clean and healthy condition.

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- (1a) If an animal or bird is kept on the premises, the licensee or permit holder shall ensure that —
- (a) the premises have an area where the animal or bird can be kept that is separate and apart from any area used by children; and
 - (b) children are not allowed access to the animal or bird except under the direct supervision of a person of not less than 18 years of age.
- (2) The Director-General may direct the licensee or permit holder to keep a specified animal or bird in the area required under subregulation (1a)(a).

*[Regulation 60 amended in Gazette 12 Jul 1991 p. 3434;
13 Feb 2001 p. 888.]*

61. Plants

The licensee or permit holder shall identify any poisonous vegetation on the premises and shall ensure that the vegetation is not accessible to children.

[Regulation 61 amended in Gazette 12 Jul 1991 p. 3434.]

62. Nutrition and food service

The licensee or permit holder shall ensure that —

- (a) the food provided by the child care service is nutritious and varied;
- (b) regard is had to the dietary needs of individual children arising from any specific cultural, religious or health requirements; and
- (c) the menu for each week is prominently displayed in a place visible to parents.

[Regulation 62 inserted in Gazette 15 Mar 1996 p. 989.]

63. Alcohol and drugs

The licensee or permit holder shall ensure that —

- (a) no person who is adversely affected by drugs or alcohol supervises or remains in the presence of a child;
- (aa) no person is permitted to consume alcohol on the child care premises while children are attending the child care service; and
- (b) no person is permitted to smoke a cigarette, cigar or pipe —
 - (i) while preparing food for the consumption of children;
 - (ii) while supervising or in the presence of a child; or
 - (iii) in a building in which the child care service is provided, or where the child care service is provided in a part of a building in that part of the building in which the child care service is provided, while children are attending the child care service.

[Regulation 63 amended in Gazette 12 Jul 1991 p. 3434; 15 Mar 1996 p. 990; 13 Feb 2001 p. 888.]

63A. Family day care — residents to provide criminal record checks

- (1) This regulation applies to family day care.
- (2) The licensee or permit holder shall ensure that each adult resident provides the licensee or permit holder with a current criminal record check within the period described in subregulation (3) and thereafter at intervals of not more than 2 years.
- (3) For the purposes of subregulation (2) the period is —
 - (a) 30 days after —
 - (i) in the case of an existing licence or permit, the relevant day; or

- (ii) in the case of a new licence or permit, the issue of the licence or permit;
 - or
 - (b) 30 days after the adult resident first resides on the child care premises,
- whichever is the later period.
- (4) The licensee or permit holder shall keep a copy of each criminal record check provided under subregulation (2).
- (5) In this regulation —
- “adult resident”** means a person, other than the licensee or permit holder, who —
- (a) has reached 18 years of age; and
 - (b) ordinarily resides on the child care premises;
- “current criminal record check”** means a criminal record check issued not more than 2 years before the day on which it is provided;
- “existing licence or permit”** means a licence or permit in force immediately before the relevant day;
- “new licence or permit”** means a licence or permit issued on or after the relevant day;
- “relevant day”** means the day on which the *Community Services (Child Care) Amendment Regulations 2001*¹ came into operation.

[Regulation 63A inserted in Gazette 13 Feb 2001 p. 888-9.]

63B. Presence of convicted people on child care premises

- (1) The licensee or permit holder shall ensure that a convicted person is not permitted on the child care premises, except with the approval of the Director-General, while children are attending the child care service.
- (2) It is a defence in proceedings for an offence under regulation 66A in respect of a failure to comply with

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subregulation (1) to show that the licensee or permit holder did not know, and could not reasonably have known, that the person was a convicted person.

[Regulation 63B inserted in Gazette 13 Feb 2001 p. 889.]

64. Long attendance of child

- (1) A licensee or permit holder shall notify the Director-General in writing, before the commencement of the period of care or within 7 days of the completion of the period of care, if any child is placed in the care of that licensee or permit holder for a period of more than 18 consecutive hours.
- (2) A licensee or permit holder shall ensure that no child is placed in the care of that licensee or permit holder for more than 14 24-hour periods in one year without the approval of the Director-General.
- (3) In subregulation (2) “**year**” means a period of 12 months commencing on 1 July.

[Regulation 64 inserted in Gazette 12 Jul 1991 p. 3433.]

65. Telephone

Every child care service shall be connected to a telephone service except in special circumstances where the Director-General waives this requirement, in which case the licensee or permit holder shall provide immediate and unimpeded access to a telephone on or immediately adjacent to the child care premises during the whole of the time the child care service is open to the public.

[Regulation 65 amended in Gazette 12 Jul 1991 p. 3434.]

66. Burns

- (1) The licensee or permit holder shall not use a portable kerosene heater on child care premises.

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- (2) The licensee or permit holder shall not use an oil-filled, fan type or similar low surface temperature heater as a portable or fixed appliance unless the appliance is —
- (a) fitted with its own temperature safety thermostat;
 - (b) not a fire hazard; and
 - (c) effectively shielded or guarded so that live parts cannot be probed.
- (3) The licensee or permit holder shall ensure that every fire or heating apparatus, howsoever fuelled, other than a low surface temperature heater is effectively shielded or guarded to prevent direct contact by or access to any child and the emission of any sparks or flame.
- (4) The licensee or permit holder shall ensure that every hot water tap to which a child has access is —
- (a) thermostatically controlled at a temperature of less than 42°C; or
 - (b) fitted with a device approved by the Director-General which effectively prevents the operation of the tap by a child.

*[Regulation 66 amended in Gazette 12 Jul 1991 p. 3434;
13 Feb 2001 p. 889-90.]*

66A. Offences

Subject to the conditions of his or her licence or permit, a licensee or permit holder who fails to comply with a regulation under this Part commits an offence.

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

[Regulation 66A inserted in Gazette 12 Jul 1991 p. 3433.]

Part 6 — Programmes and equipment

[Heading amended in Gazette 13 Feb 2001 p. 890.]

67. Programmes

- (1) The licensee or permit holder shall ensure that the child care service provides a programme of activities which is developmentally appropriate to the needs of the children attending the service.
- (2) The programme developed by each child care service shall —
 - (a) provide a balance of indoor and outdoor activities;
 - (b) include activities that a child may choose to participate in; and
 - (c) be designed to stimulate and provide for the development of each child's social, cultural, physical, emotional, intellectual, language and creative potential.
- (3) Except in family day care, the licensee or permit holder shall ensure that a copy of the programme is prominently displayed in each indoor playing area on the child care premises.

[Regulation 67 amended in Gazette 12 Jul 1991 p. 3434; 15 Mar 1996 p. 990.]

68. Equipment

The licensee or permit holder shall ensure that the child care service is provided with equipment in accordance with guidelines approved by the Director-General.

[Regulation 68 inserted in Gazette 15 Mar 1996 p. 990.]

Part 7 — Administration

69. Admission register

- (1) The licensee or permit holder shall ensure that a record in the form of an admission register is kept for each child enrolled in the child care service.
- (2) The admission register shall include —
 - (a) the full name, date of birth, gender and address of the child;
 - (b) the full name, address, place of employment and telephone number of each parent;
 - (c) the full name and address of the person from whom the child will be received;
 - (d) the full name, address and telephone number of a person authorised by a parent to collect the child from the child care premises;
 - (e) the full name, address and telephone number of a person, other than a parent, who may be contacted in an emergency;
 - (f) the name, address and telephone number of the child's medical practitioner or hospital;
 - (g) a parent's written authorisation for medical attention to be sought for the child if required in an emergency;
 - (h) a parent's written authorisation for the child to be escorted to or from a specified place;
 - (i) details of any court order relating to the guardianship or custody of, or access to, the child;
 - (j) the principal language spoken by the child or, if the child has not learned to speak, by the child's parents;
 - (k) any relevant information relating to cultural, religious, dietary or other special needs that the child may have;

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- (l) relevant details of the child's medical history including current immunization status and any allergies suffered by the child; and
- (m) any other relevant information relating to the child.

[Regulation 69 inserted in Gazette 15 Mar 1996 p. 991.]

69A. Record of medication

- (1) The licensee or permit holder shall ensure that a record is kept of any medication administered to a child while attending the child care service.
- (2) A record of medication shall include —
 - (a) the name of the medication;
 - (b) the date and time of the administration of the medication;
 - (c) the quantity of medication administered;
 - (d) the name of the person who administered the medication; and
 - (e) except in an emergency, a parent's written authorisation for the administration of the medication and any instructions as to the administration of the medication.

[Regulation 69A inserted in Gazette 15 Mar 1996 p. 991-2.]

69B. Other records

- (1) The licensee or permit holder shall ensure that the following records are kept —
 - (a) a daily record of attendance which includes —
 - (i) the times of arrival and departure; and
 - (ii) the signature of the person responsible for verifying the accuracy of the record;
 - (b) a record of —
 - (i) any injury to or accident involving a child while attending the child care service, including details

- of the nature and circumstances of the injury or accident;
 - (ii) any treatment given to a child who is injured or becomes ill while attending the child care service; or
 - (iii) the death of a child while attending the child care service, including details of the circumstances in which the child died;
 - (c) a record of excursions which includes, in relation to each excursion —
 - (i) a parent's authorisation in accordance with subregulation (2) for each child who participated in the excursion;
 - (ii) the destination; and
 - (iii) times of departure and return;
 - (d) a record of the names of children temporarily absent from the child care service for whatever purpose;
 - (e) a record of each practice of emergency procedures conducted in accordance with regulation 59;
 - (f) such records relating to the employment of staff as are required to be kept under industrial and revenue collection legislation; and
 - (g) particulars of the programme referred to in regulation 67.
- (2) A parent's authorisation for the purposes of subregulation (1)(c)(i) is to include —
- (a) the following information —
 - (i) the date of the excursion;
 - (ii) the destination;
 - (iii) the proposed times of departure and return;
 - (iv) the proposed method of transport (if any);

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- (v) the number of adults accompanying the child;
and
- (vi) the activities to be undertaken;
and
- (b) the signature of a parent of the child.

*[Regulation 69B inserted in Gazette 15 Mar 1996 p. 992;
amended in Gazette 13 Feb 2001 p. 890.]*

69C. Keeping of records

- (1) The licensee or permit holder shall ensure that a record required to be kept under regulation 69, 69A or 69B is kept in an up to date form and in a safe and secure area on the child care premises.
- (2) The licensee or permit holder shall ensure that —
 - (a) a record under regulation 69B(1)(b)(i) or (ii) is retained until the child attains the age of 24 years;
 - (b) a record under regulation 69B(1)(b)(iii) is retained for a period of 6 years from the day on which the record was made; and
 - (c) a record under regulation 69B(1)(e) is retained for a period of 2 years from the day on which the record was made.

*[Regulation 69C inserted in Gazette 15 Mar 1996 p. 992;
amended in Gazette 13 Feb 2001 p. 891.]*

69D. Confidentiality of records

The licensee or permit holder shall ensure that information contained in a record required to be kept under regulation 69, 69A or 69B is not directly or indirectly disclosed or communicated to another person except —

- (a) as required or allowed under the Act or any other written law; or

- (b) with the written authorisation of the person or, in the case of a child, the parent of the child, to whom the information relates.

[Regulation 69D inserted in Gazette 15 Mar 1996 p. 993.]

70. Falsification of records

A person who falsifies a record required to be kept under regulation 69, 69A or 69B commits an offence.

Penalty: \$500.

[Regulation 70 amended in Gazette 15 Mar 1996 p. 993.]

71. Other particulars

- (1) The licensee or permit holder shall ensure that the following particulars are readily available in writing to parents upon request —
 - (a) a statement of the child care service philosophy;
 - (b) an outline of the child care service programme;
 - (c) times and days of opening;
 - (d) fees;
 - (e) the child care service practice and policy regarding outings;
 - (f) the child care service practice and policy regarding delivery and collection of children;
 - (fa) the child care service practice and policy regarding the discipline and management of children;
 - (fb) the child care service practice and policy regarding food, nutrition and the dietary needs of individual children;
 - (fc) the child care service practice and policy regarding sun protection for children;
 - (g) the child care service practice and policy regarding illness and infections, including any practice or policy

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relating to the exclusion of children suffering from a communicable disease or condition;

- (ga) the child care service practice and policy regarding relief family day care;
 - (gb) details of when the lunch period begins each day and when it ends, and of the arrangements regarding contact staff during that period;
 - (h) emergency and evacuation procedures;
 - (i) procedures for dealing with concerns of parents;
 - (ia) the periods of time for which particular records are required to be retained under regulation 69C(2); and
 - (j) the name, address and telephone number of the Child Care Licensing Unit of the Department.
- (2) The licensee or permit holder shall ensure that the particulars referred to in subregulation (1)(i) and (j) are displayed in a prominent position at or near the main entrance to the child care premises.
- (3) The licensee or permit holder shall ensure that a current copy of these regulations is readily available to parents upon request.

[Regulation 71 amended in Gazette 12 Jul 1991 p. 3433 and 3434; 15 Mar 1996 p. 993; 13 Feb 2001 p. 891; 25 Nov 2003 p. 4758.]

72. Visiting

The licensee or permit holder shall permit a parent who is responsible at the time for the attendance of a child at the child care service to visit the child at the child care premises at any reasonable time.

[Regulation 72 amended in Gazette 12 Jul 1991 p. 3434.]

73. Insurance

Every licensee and permit holder shall obtain and keep current a policy of insurance that will adequately meet the public liability of that person in respect of the provision of a child care service.

[Regulation 73 inserted in Gazette 12 Jul 1991 p. 3433.]

74. Discipline

- (1) In the discipline or management of children enrolled in a child care service the licensee or permit holder shall ensure that —
 - (a) every child is given positive guidance directed towards acceptable behaviour with praise freely given and blame and admonition kept to a practicable minimum;
 - (b) no child is subjected to any form of corporal punishment, punishment by solitary confinement, immobilization or other humiliating or frightening punishment; and
 - (c) no child is isolated for any reason other than illness or accident for any period exceeding 3 minutes.
- (2) A child isolated under subregulation (1)(c) shall be kept in the line of vision of a staff member.

[Regulation 74 amended in Gazette 12 Jul 1991 p. 3434; 15 Mar 1996 p. 993.]

74A. Offences

Subject to the conditions of his or her licence or permit, a licensee or permit holder who fails to comply with a regulation under this Part commits an offence.

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

[Regulation 74A inserted in Gazette 12 Jul 1991 p. 3434.]

Part 8 — Review

75. Review of regulations

- (1) The Director-General shall appoint a Consultative Committee to review the operation of these regulations.
- (2) The Consultative Committee shall include such persons as the Director-General thinks appropriate.
- (3) The Director-General may discharge or alter the Consultative Committee as the Director-General thinks appropriate.
- (4) The Consultative Committee shall carry out a review of the operation of these regulations and prepare a report based on the review for the Director-General by 30 March 1991 and every 3 years thereafter.
- (5) Subject to the directions of the Director-General, the Consultative Committee shall determine its own procedures.

*[Regulation 75 amended in Gazette 13 Feb 2001 p. 891;
25 Nov 2003 p. 4759.]*

Notes

- ¹ This reprint is a compilation as at 8 April 2005 of the *Community Services (Child Care) Regulations 1988* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

| Citation | Gazettal | Commencement |
|---|----------------------------|---|
| <i>Community Services (Child Care) Regulations 1988</i> | 25 Nov 1988 p. 4684-95 | 1 Mar 1989 (see r. 2 and <i>Gazette</i> 25 Nov 1988 p. 4679) |
| <i>Community Services (Child Care) Amendment Regulations 1991</i> | 12 Jul 1991 p. 3428-34 | 12 Jul 1991 |
| <i>Community Services (Child Care) Amendment Regulations 1996</i> ⁶ | 15 Mar 1996 p. 981-94 | 15 Mar 1996 |
| Reprint of the <i>Community Services (Child Care) Regulations 1988</i> as at 22 Jan 1997 (includes amendments listed above) (correction in <i>Gazette</i> 8 Jul 1997 p. 3564) | | |
| <i>Community Services (Child Care) Amendment Regulations 2001</i> ^{4,7,8} | 13 Feb 2001 p. 872-91 | 13 Feb 2001 |
| Reprint of the <i>Community Services (Child Care) Regulations 1988</i> as at 3 Aug 2001 (includes amendments listed above) | | |
| <i>Community Services (Outside School Hours Care) Regulations 2002</i> r. 103 | 28 Aug 2002 p. 4367-440 | 28 Aug 2003 (see r. 2) |
| <i>Equality of Status Subsidiary Legislation Amendment Regulations 2003</i> Pt. 6 | 30 Jun 2003 p. 2581-638 | 1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579) |
| <i>Community Services (Child Care) Amendment Regulations 2003</i> | 25 Nov 2003 p. 4758-9 | 25 Nov 2003 |
| Reprint 3: The <i>Community Services (Child Care) Regulations 1988</i> as at 8 Apr 2005 (includes amendments listed above) | | |

- ^{1a} On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

| Short title | Number and year | Assent | Commencement |
|---|-----------------|-------------|-----------------------------|
| <i>Children and Community Services Act 2004</i> s. 250(2)(b) ⁹ | 34 of 2004 | 20 Oct 2004 | To be proclaimed (see s. 2) |

² Repealed by the *School Education Act 1999*.

³ Repealed by the *Acts Amendment (Child Care Services) Act 1987* s. 12.

⁴ The *Community Services (Child Care) Amendment Regulations 2001* r. 15(2) and (3) read as follows:

“

(2) A person employed in a child care service under former regulation 30(2) immediately before the commencement of these regulations may continue to be employed in that child care service in place of a staff member required under new regulation 30(1) as if that person had a qualification referred to in paragraph (a), (c) or (e) of new regulation 30(2).

(3) In subregulation (2) —

“**former regulation 30(2)**” means regulation 30(2) of the *Community Services (Child Care) Regulations 1988* as in force immediately before the commencement of these regulations;

“**new regulation 30(1)**” means regulation 30(1) of the *Community Services (Child Care) Regulations 1988* inserted by subregulation (1);

“**new regulation 30(2)**” means regulation 30(2) of the *Community Services (Child Care) Regulations 1988* inserted by subregulation (1).

”.

⁵ Repealed by the *Child Welfare (Care Centres) Repeal Regulations 1988* published in *Gazette* 25 Nov 1988 p. 4695 and operative 1 Mar 1989 (see *Gazette* 25 Nov 1988 p. 4679).

⁶ The *Community Services (Child Care) Amendment Regulations 1996* r. 33 is a transitional provision that is of no further effect.

⁷ The *Community Services (Child Care) Amendment Regulations 2001* r. 21(2) is a savings provision that is of no further effect.

⁸ The *Community Services (Child Care) Amendment Regulations 2001* r. 39(2) is a transitional provision that is of no further effect.

⁹ On the date as at which this reprint was prepared, the *Children and Community Services Act 2004* s. 250(2)(b) had not come into operation. It reads as follows:

“

250. Repeal, transitional and savings provisions

(2) The following regulations are repealed —

.....

(b) the *Community Services (Child Care) Regulations 1988*;

”.