

Western Australia

Community Services Act 1972

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Community Services Act 1972

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Community Services Act 1972

An Act to make provision for the establishment of a Department for Family and Children's Services², to promote individual and family welfare in the community, and for incidental and other purposes.

[Long title amended by No. 121 of 1984 s. 4; No. 57 of 1997 s. 34(1).]

1. Short title

This Act may be cited as the *Community Services Act 1972*¹.

[Section 1 amended by No. 121 of 1984 s. 5.]

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Interpretation

In this Act, unless a contrary intention appears, —

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

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

but excludes —

- (aa) care provided to a child by a guardian, custodian, person having lawful access (whether by common law, written law or court order) or relative of the child;
- (bb) care provided in circumstances where a person of a description referred to in paragraph (aa) is present in or in close proximity to the part of the premises used for the provision of the service;
- (cc) care provided to a child in the premises where the child resides or substantially in those premises but including outings during which the child is in the care of the person providing the service;
- (dd) a service provided to a child unless the service is provided —
 - (i) in return for payment or reward, either direct or indirect through payment or reward for some other service; or
 - (ii) as a benefit of employment;
- (ee) care of a kind required to be licensed under section 111 of the *Child Welfare Act 1947*;
- (ff) care of a kind provided at a community kindergarten registered under Part 5 of the *School Education Act 1999*; and
- (gg) care prescribed for the purposes of this definition;

“delegate” means a delegate of the Director-General by reason of a delegation pursuant to section 20;

“Department” means the department referred to in section 4;

“Director-General” means the Director-General of the Department;

“pre-school age” in relation to a child, means an age before the child reaches the compulsory education period within the meaning of the *School Education Act 1999*;

“relative” in relation to a child, means —

- (a) mother, father, stepfather, stepmother, brother, sister, aunt, uncle, first cousin or grandparent of the child whether the relationship is of the whole blood or half blood or by affinity or established by the *Artificial Conception Act 1985*, and notwithstanding that the relationship is traced through, or to, a person whose parents were not married to each other at the time of the child’s birth or subsequently, or depends upon the adoption of any person; and
- (b) in relation to a child of Aboriginal descent, includes a person regarded under Aboriginal customary law as an equivalent relative in relation to the child as a person mentioned in paragraph (a).

[Section 3 amended by No. 5 of 1978 s. 3; No. 121 of 1984 s. 6; No. 105 of 1987 s. 4; No. 57 of 1997 s. 34(2); No. 36 of 1999 s. 247; No. 74 of 2003 s. 36.]

4. Establishment of Department for Family and Children’s Services²

For the purposes of this Act there is hereby established as a department of the Public Service of the State, a department to be known as the Department for Family and Children’s Services².

[Section 4 amended by No. 121 of 1984 s. 7; No. 57 of 1997 s. 34(3).]

5. Administration of the Act

- (1) The administration of this Act and the control of the Department is vested in the Minister³.
- (2) Subject to the *Public Sector Management Act 1994*⁴, and to any direction of the Minister, the Director-General has the general administration of the Department and he shall be chief executive officer⁵ of the Department.

[Section 5 amended by No. 121 of 1984 s. 8 and 9.]

6. Minister to be body corporate

- (1) For the purposes of this Act, the Minister shall be a body corporate under the name of “The Minister for Family and Children’s Services” with perpetual succession and a common seal.
- (1a) The change of name of the body corporate referred to in subsection (1) made by section 34(4) of the *Statutes (Repeals and Minor Amendments) Act 1997* does not affect the body corporate’s corporate identity or its rights and obligations.
- (2) The Minister, as so constituted a body corporate, is capable in the corporate name of suing and being sued, and of acquiring, holding, exchanging, leasing, and disposing of real and personal property, and of doing and suffering all that bodies corporate may do and suffer.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Minister affixed to a document and shall presume it was duly affixed.

[Section 6 amended by No. 57 of 1997 s. 34(4) and (5).]

6A. Delegation by Minister

- (1) Subject to section 17D(4), the Minister may by written instrument, either generally or as otherwise provided by the instrument of delegation, delegate to a person any of the Minister’s powers, functions or duties under this Act, except this power of delegation.
- (2) Section 20(2), (3) and (5) apply, with appropriate modifications, to a delegation by the Minister under this section.

[Section 6A inserted by No. 57 of 1997 s. 34(7).]

7. Director-General of Community Services

- (1) Subject to subsection (2), a person shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* to the office of Director-General.

- (2) The person who is to be appointed to the office of Director-General shall be chosen from amongst persons who have attained tertiary level qualifications in a recognized field of the behavioural or social sciences relevant to the administration of social and community welfare services, or who possess other academic qualifications which, to the satisfaction of the Minister, indicate the attainment of a degree of relevant professional knowledge of a comparable standard.

[Section 7 amended by No. 121 of 1984 s. 8 and 10; No. 32 of 1994 s. 3(2).]

8. Other staff

- (1) Subject to subsection (2), a person shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* to the office of Assistant Director-General and that person when so appointed is authorised to exercise any power and perform any duty that the Director-General may exercise or is required to perform under this Act, whether the Director-General is absent or not; but the appointment of an Assistant Director-General does not affect the exercise or discharge by the Director-General himself of any power or duty.
- (2) The person who is to be appointed the Assistant Director-General shall be chosen from amongst persons who would be eligible for appointment to the office of Director-General.
- (3) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*, such officers and temporary employees as may be necessary to provide administrative, scientific, technical and other services to the Department.
- (4) The Minister may engage, under contract for services, such professional and technical or other assistance as may be necessary to enable the Department to carry out effectively its functions under this Act, and enter into arrangements with —

s. 10

- (a) a Minister of the Crown of any State of the Commonwealth, a Minister of State of the Commonwealth, a department or instrumentality of the Commonwealth or any State of the Commonwealth; or
- (b) a university or other tertiary institution; or
- (c) any other body or person,

with respect to the conduct of any investigation, study, research or project that may be necessary or desirable for the purposes of this Act.

[Section 8 amended by No. 121 of 1984 s. 11; No. 32 of 1994 s. 3(2).]

[9. Repealed by No. 121 of 1984 s. 12.]

10. Functions

The functions of the Department are —

- (a) to promote individual and family welfare in the community;
- (b) to prevent the disruption of the welfare of individuals and families in the community, and to mitigate the effects of any disruption;
- (c) to co-ordinate, assist and encourage the provision of social welfare services to the community, and for that purpose to confer and collaborate with other bodies and instrumentalities who offer, or may offer, a social welfare service;
- (d) to conduct, promote and encourage research into the problems of community welfare;
- (e) to conduct, promote and encourage programmes of training or rehabilitation, or which are otherwise of a nature that is concerned with the advancement of the welfare of particular individuals or groups in the community who are disadvantaged;

- (f) to consider and initiate, or to assist in, the provision and development of new or additional welfare services, whether of a general or specific nature, for individuals or groups within the community who are needy or disadvantaged;
- (g) to encourage the development of the greatest possible degree of service and administration at the local level, and to emphasize the value of preventive measures;
- (h) to provide assistance, where the Minister considers it to be necessary, when the welfare of any individual, family or group is threatened or in jeopardy;
- (i) to provide and, where appropriate, to manage facilities, which may include land, buildings and specialized appliances, for specific purposes consistent with the objects of this Act;
- (j) generally, to administer and give effect to the provisions of this Act and to carry out such other functions as may be prescribed, or as the Minister may direct.

11. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in respect of the Department and its operations.

[Section 11 inserted by No. 98 of 1985 s. 3.]

12. Gifts, etc.

The Minister may accept any gift, devise or bequest of any property that is made for the purpose of carrying out the objects of this Act, and the Minister may, subject to any trusts relating thereto, use any such property or apply the proceeds or the income arising therefrom in any manner he thinks fit towards that purpose.

13. Director-General to have access to disadvantaged individuals in employment

Where a person who is, in the opinion of the Director, an individual who is disadvantaged is employed, or engaged as an independent contractor, any officer of the Department, or any person generally or specifically authorised in writing by the Director-General for that purpose, shall be permitted to have access to that individual and to any place in which he may be, for such inspection and inquiry as may be necessary for the purposes of this Act.

[Section 13 amended by No. 121 of 1984 s. 8.]

14. Director-General may manage property of disadvantaged individuals

- (1) The Director-General may undertake the general care, protection and management of the property of any person who, in the opinion of the Director-General, is disadvantaged, and may —
- (a) take possession of, retain, sell or otherwise dispose of, any such property, whether real or personal;
 - (b) in his own name sue for, recover or receive any money or other property due to, or belonging or held in trust for, the benefit of such a person, or damages for any conversion of or injury to any such property;
 - (c) exercise in the name of such a person any power that the person might exercise for his own benefit;
 - (d) in the name and on behalf of such a person appoint any person to act as attorney or agent for any purpose connected with the property of that person;
 - (e) require from any person who has had any contractual transaction or financial dealing or dealings in property with such a person, a statement in writing of any transaction or dealing during the period of one year immediately preceding the requisition.

- (2) The Director-General may expend or apply any money in his possession or standing to the credit of any such person for the maintenance, education, advancement or benefit of that person or any dependant of that person.

[Section 14 amended by No. 121 of 1984 s. 8.]

15. Restrictions on the exercise of powers under section 14

The powers conferred by section 14 shall not be exercised in relation to any person where —

- (a) that person is over the apparent age of 18 years, unless he has given his consent in writing and has not subsequently given notice in writing to the Director-General withdrawing that consent;
- (b) that person is under the apparent age of 18 years, and has a parent, guardian or near relative whose whereabouts are known or can be ascertained by reasonable inquiry, unless the written consent of such parent, guardian or near relative has been obtained and has not subsequently been withdrawn by notice in writing given to the Director-General.

[Section 15 amended by No. 121 of 1984 s. 8.]

16. Evidentiary provisions

Production of evidence in the prescribed form by an officer of the Department is sufficient proof in any court that the consent required to be given under section 15 has been obtained and remains in effect and shall be sufficient evidence in any court as to the opinion of the Director-General in relation to the person named therein at the time specified in the form.

[Section 16 amended by No. 121 of 1984 s. 8.]

17. Appeals

Where a person is dissatisfied with —

s. 17A

- (a) any decision to exercise a power under section 13 or section 14 in relation to any person; or
- (b) the exercise or purported exercise of any such power,

he may, within 14 days thereafter, appeal in writing to the Minister who shall hear and determine the matter.

17A. Provision of child care service

- (1) A person shall not provide a child care service nor use or keep any premises for the provision of a child care service except under and in accordance with a licence or a permit issued under this Act.
- (2) A person shall not use or keep any premises for the provision of a child care service unless those premises are under the effective supervision of the person who holds a licence or permit under this Act authorising the provision of a child care service on those premises.
- (3) A person shall not in any manner represent or imply that that person provides a child care service or uses or keeps premises for the purpose of providing a child care service except in a manner consistent with a licence or permit issued in respect of that service and those premises to that person under this Act.

Penalty:

- (a) In the case of a first offence under this section, \$2 000 and a daily penalty of \$200; and
- (b) in the case of a subsequent offence under this section, \$4 000 and a daily penalty of \$400 or imprisonment for 6 months, or both a fine and imprisonment.

[Section 17A inserted by No. 105 of 1987 s. 5.]

17B. Director-General may issue licences and permits

- (1) The Director-General may issue a licence to a person authorising the provision of a child care service by that person

in respect of a number of children specified in the licence on premises specified in the licence for a period of 2 years.

- (2) The Director-General may issue a permit to a person authorising, subject to any conditions that may be specified in the permit, the provision of a child care service by that person in respect of a number of children specified in the permit on premises specified in the permit for a period specified in the permit not exceeding 1 year.
- (3) Where an application for a licence or permit is made in accordance with the regulations, the Director-General shall issue a licence or a permit to the applicant if the Director-General is satisfied —
 - (a) that the applicant is a fit and proper person to hold a licence or permit, or in the case of an application by a body corporate, department of the public service or a public authority, that the officer of that body, department or authority who is likely to be directly responsible for the effective supervision of the child care service is a fit and proper person to be so responsible; and
 - (b) that the applicant is capable of providing a child care service in accordance with the regulations or, in the case of a permit, in accordance with the terms of the permit.
- (4) The Director-General may amend a licence or a permit as to the number of children or the premises specified in the licence or permit.
- (5) The Director-General may renew a licence and may accept the surrender of a licence or permit.
- (6) The Director-General may cancel or suspend a licence or permit if the Director-General —
 - (a) ceases to be satisfied that the holder of the licence or permit is qualified to be issued with a licence or permit in terms of subsection (3)(a) and (b); or

s. 17C

- (b) is satisfied that the holder of the licence or permit has persistently failed to comply with the regulations or in case of a permit with any condition specified in the permit.

[Section 17B inserted by No. 105 of 1987 s. 5.]

17C. Appeals to Local Court

- (1) Where the Director-General —
 - (a) refuses an application for a licence or permit or for the renewal of a licence;
 - (b) issues a permit subject to a condition to which the applicant objects;
 - (c) refuses to approve an officer of a body corporate, department of the public service or public authority for the purposes of section 17B(3)(a); or
 - (d) cancels or suspends a licence or a permit,

the applicant or, in a case to which paragraph (c) applies, the officer, may apply to the State Administrative Tribunal for a review of the decision of the Director-General.

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

[(3), (4) repealed]

[Section 17C inserted by No. 105 of 1987 s. 5; amended by No. 55 of 2004 s. 133.]

17D. Power to exempt

- (1) The Minister may by order published in the *Gazette* exempt from the application of section 17A or the provisions of the regulations or certain of those regulations a specified child care service or a child care service of a specified kind or description.
- (2) The Minister may by order published in the *Gazette* vary or cancel an order made under subsection (1).
- (3) In the exercise of the powers conferred by subsections (1) and (2), the Minister shall have regard to —
 - (a) the best interests of the children for whom the child care service is proposed to be provided and any special needs or interests of those children;
 - (b) the views of parents and guardians of children for whom the service is intended;
 - (c) the needs of the locality in which a child care service is proposed or the children for whom the child care service is proposed and the extent to which those needs are being met; and
 - (d) the desirability of or need for short-term, special, innovative, experimental, culturally appropriate, culturally specific child care services.
- (4) The Minister may by written instrument delegate all or any of his powers under this section to the Director-General and any power so delegated may be further delegated by the Director-General in accordance with section 20.

[Section 17D inserted by No. 105 of 1987 s. 5.]

17E. Power to enter and inspect premises

- (1) A licensing officer may —
 - (a) enter at any reasonable time any premises specified in a licence or permit issued under this Act as premises on which a child care service may be provided and inspect

s. 17F

those premises and any equipment or other thing on those premises;

- (b) require any person who is on premises entered in accordance with this section to provide any information that is necessary to ascertain whether the regulations have been or are being complied with;
 - (c) inspect and for that purpose require the production of, any register, record or other document that any person is required by the regulations to keep and copy or take extracts from any such register, record or other document.
- (2) Where a justice is satisfied that there are reasonable grounds for suspecting that a child care service is being provided on premises other than premises on which such a service may be lawfully provided under a licence or a permit, the justice may issue a warrant authorising a licensing officer to enter and inspect those premises.
- (3) In this section, “**licensing officer**” means a person who is appointed as a licensing officer under the regulations.

[Section 17E inserted by No. 105 of 1987 s. 5.]

17F. Application to Government and public authorities

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

[Section 17F inserted by No. 105 of 1987 s. 5.]

18. Application of *Financial Administration and Audit Act 1985*

The Director-General shall, in accordance with the *Financial Administration and Audit Act 1985*, keep proper records and accounts of all money and other property received or dealt with by him under the provisions of this Act.

[Section 18 amended by No. 5 of 1978 s. 5; No. 121 of 1984 s. 8; No. 98 of 1985 s. 3.]

19. Right of representation in proceedings

- (1) Any officer of the Department, or any person generally or specifically authorised in writing by the Director-General for that purpose may in any legal proceedings in any court to which a person who is, in the opinion of the Director-General, disadvantaged is a party, or in which such person is indicted for or charged with any crime or offence, address the court or the jury on behalf of that person and examine and cross-examine witnesses.
- (2) A prosecution for an offence against any provision of this Act may be instituted in the name of the Director-General by any officer of the Department authorised for the purposes of this section by the Director-General and any prosecution instituted in the name of the Director-General shall, in the absence of evidence to the contrary, be taken to have been instituted by his authority.
- (3) An officer of the Department authorised for the purposes of this section by the Director-General may appear on behalf of the Director-General in any proceedings in any court for an offence against this Act.

[Section 19 amended by No. 121 of 1984 s. 8; No. 105 of 1987 s. 6; No. 70 of 2004 s. 82; No. 84 of 2004 s. 80.]

20. Power to delegate

- (1) The Director-General may, with the approval of the Minister, delegate all or any of his powers or functions —
 - (a) to any officer of the Department;
 - (b) to any person or body or any officer or employee thereof, being a person or body, whether corporate or not, who or which under the authority of any Act administers or carries on for the benefit of the State, or any district or part of the State, a social service, or who or which exercises or performs any function in relation to the carrying on of a social service;

- (c) to any consultative or advisory or working or standing Committee, council or board (whether a body corporate or voluntary association and whether established pursuant to section 22 or pursuant to any other Act or otherwise) where that committee, council or board pursuant to this or any other Act or otherwise with the consent or approval of the Minister is performing or is intended to perform any function in relation to the carrying on of a social service or alternatively to some expressly designated members of such a committee, council or board,

and may, with the approval of the Minister, vary or revoke any such delegation.

- (2) A power or function delegated by the Director-General may be exercised or performed by the delegate —
 - (a) in accordance with the terms of delegation; and
 - (b) if the exercise of the power or the performance of the function in relation to a matter is dependent upon the opinion, belief or state of mind of the Director-General — upon the opinion, belief or state of mind of the delegate in relation to that matter.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a duty by the Director-General.
- (4) A delegation may be general or specific and if in writing shall be signed by both the Director-General and the Minister and if the Minister so directs shall be published in the *Government Gazette* as soon as practicable after execution.
- (5) Where inconsistency or conflict arises out of the exercise of a function or the performance of a duty by both the Director-General and a delegate the acts or determinations of the Director-General prevail and to the extent of any inconsistency or conflict the acts or determinations of a delegate are of no force or effect whether the acts or determinations of

the Director-General occur before, contemporaneously with, or subsequent to, those of the delegate.

- (6) A delegate who —
- (a) knowingly and intentionally does any act in excess of the powers, authorities and functions delegated to him pursuant to the applicable instrument of delegation;
 - (b) knowingly and intentionally fails or refuses to discharge any duty imposed on him by this Act and the applicable instrument of delegation;
 - (c) knowingly and intentionally fails or refuses to carry out lawful directions of the Director-General given in writing under his hand in respect of matters arising out of the administration of this Act; or
 - (d) counsels, procures, causes or directs any other person to do or omit to do anything which if it were done or not done knowingly and intentionally by the first person would be an offence against this Act,

commits an offence against this Act.

Penalty: \$2 000.

[Section 20 amended by No. 5 of 1978 s. 6; No. 121 of 1984 s. 8; No. 105 of 1987 s. 7.]

21. Obstruction

- (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.
Penalty: \$2 000.
- (2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised to call for or may reasonably require, or who, when required to give any such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

- (3) Any statement made pursuant to a requirement made in the execution of this Act shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against the person for any offence not being the offence of contravening or failing to comply with the provisions of this section.
- (4) A refusal to give to any person any information which that person cannot show to be required in relation to any individual for the purposes of this Act shall not be treated as wilfully obstructing that person.

[Section 21 amended by No. 105 of 1987 s. 8.]

22. Establishment of organizations

- (1) The Governor may by Order in Council published in the *Government Gazette* establish boards, committees and councils to assist or facilitate the discharge of the functions and duties of the Director-General and the Department and may dissolve or reconstitute such boards, committees and councils.
- (2) Any such Order —
 - (a) shall specify the name by which the board, committee or council is to be known and the general objects and powers of that organization; and
 - (b) may specify conditions to which that organization and the members thereof are to be subject in the discharge of the duties and functions of that organization and the members thereof.
- (3) Any such Order may, by a subsequent Order in Council of the Governor and published in the *Government Gazette*, be altered or varied in respect of the matters for which provision is made in subsection (2), and thereupon the Order as so altered or varied has effect accordingly.

- (4) Each board, committee and council so established and the members thereof are responsible to the Minister for the proper discharge of their duties and functions subject to the conditions, if any, specified pursuant to subsection (2) in respect of that organization and the members thereof, and the Minister may by instrument in writing appoint and remove members thereof including members appointed in a representative capacity and determine the status and seniority of the members of that organization.
- (5) Members of a board, committee, or council so established may be paid such remuneration and allowances as the Minister, on the recommendation of the Minister for Public Sector Management⁶, from time to time determines.

[Section 22 inserted by No. 5 of 1978 s. 6; amended by No. 121 of 1984 s. 8.]

23. Agents of Minister in his corporate capacity

The Director-General, the Assistant Director-General, any officer of the Department, any delegate or any person who is a member or officer of a body that is a delegate, while acting in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act, is deemed to be the agent of the Minister as the body corporate constituted by section 6.

[Section 23 inserted by No. 5 of 1978 s. 7; amended by No. 121 of 1984 s. 13.]

24. Immunity

No civil liability shall attach to the Minister in his personal capacity, the Director-General, the Assistant Director-General, any officer of the Department, any delegate, or any person who is a member of or an officer of a body that is a delegate for any act or omission by him or it in good faith and in the exercise or purported exercise of his or its powers or functions, or in the

discharge or purported discharge of his or its duties, under this Act.

[Section 24 inserted by No. 5 of 1978 s. 7; amended by No. 121 of 1984 s. 14.]

25. Regulations

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

- (a) specifying the classes or qualifications of persons who may be members of any board, committee or council established pursuant to section 22;
- (b) providing for the methods of selection of representative members and the persons who may select and propose nominees to be representative members of such boards, committees and councils;
- (c) providing for meetings of such boards, committees and councils and for the conduct of their meetings and procedures generally;
- (d) regulating the manner in which such boards, committees and councils may deal with persons and property under their administration or control;
- (e) regulating applications for licences and permits in respect of child care services, the assessment of applicants, objections, the issue of licences and permits, the renewal of licences and the cancellation, suspension or surrender of licences and permits;
- (f) providing for the appointment, powers and duties of licensing officers;
- (g) establishing a mechanism for the review of regulations relating to child care services;

- (h) regulating the staffing requirements for the provision of child care services;
- (i) regulating the building and other physical environment requirements for the provision of child care services;
- (j) prescribing requirements as to the health and safety of children during the provision of child care services;
- (k) regulating programmes of activities and equipment to be provided for child care services;
- (l) regulating the administration of child care services, the records to be maintained and the returns to be made;
- (m) empowering the Director-General to give directions generally or in particular cases to the holders of licences and permits as to the provision of child care services and in special circumstances in particular cases to exempt in writing holders of licences and permits from compliance with specified regulations for a period of time specified in the exemption;
- (n) providing for fees to be paid;
- (o) providing that contravention of a regulation constitutes an offence and providing for penalties not exceeding a fine of \$1 500 and a daily penalty of \$100;
- (p) prescribing provisions of a savings or transitional nature consequential upon the making of regulations regulating the staffing requirements or the building or other physical environment requirements for the provision of child care services.

[Section 25 inserted by No. 5 of 1978 s. 7; amended by No. 105 of 1989 s. 9.]

Notes

¹ This is a compilation of the *Community Services Act 1972* 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

Short title	Number and year	Assent	Commencement
<i>Community Welfare Act 1972</i> ⁷	31 of 1972	16 Jun 1972	1 Jul 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2097)
<i>Community Welfare Act Amendment Act 1978</i>	5 of 1978	11 May 1978	28 Nov 1980 (see s. 2 and <i>Gazette</i> 28 Nov 1980 p. 3997)
<i>Acts Amendment (Department for Community Services) Act 1984 Pt. II</i> ⁸	121 of 1984	19 Dec 1984	1 Jan 1985 (see s. 2 and <i>Gazette</i> 28 Dec 1984 p. 4197)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
Reprint of the <i>Community Services Act 1972</i> as at 15 Oct 1986 (includes amendments listed above)			
<i>Acts Amendment (Child Care Services) Act 1987 Pt. II</i> ⁹	105 of 1987	16 Dec 1987	1 Mar 1989 (see s. 2 and <i>Gazette</i> 25 Nov 1988 p. 4679)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 34</i> ¹⁰	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>School Education Act 1999 s. 247</i>	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
Reprint of the <i>Community Services Act 1972</i> as at 5 Apr 2002 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 36</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 22</i> ¹⁶	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Law Amendment (Simple Offences) Act 2004 s. 82</i>	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. 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>Sentencing Legislation Amendment and Repeal Act 2003 s. 45</i> ¹¹	50 of 2003	9 Jul 2003	To be proclaimed (see s. 2)
<i>Children and Community Services Act 2004 s. 250(1)(b)</i> ^{12, 13}	34 of 2004	20 Oct 2004	To be proclaimed (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 142</i> ¹⁴	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)

² Under the *Alteration of Statutory Designations Order (No. 3) 2001* the former Department for Family and Children's Services is now called the Department for Community Development.

³ The Minister, as at the date on which this reprint was prepared, is the Minister for Community Development.

⁴ Under the *Public Sector Management Act 1994* s. 112(1), a reference in a written law to the *Public Service Act 1978* is to be construed as if it had been amended to

be a reference to the *Public Sector Management Act 1994*. This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

⁵ Under the *Acts Amendment (Public Service) Act 1987* s. 31(1)(f) a reference in a written law to “Permanent Head” is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to “chief executive officer”. This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

⁶ Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

⁷ Now known as the *Community Services Act 1972*; short title changed (see note under s. 1).

⁸ The *Acts Amendment (Department for Community Services) Act 1984* Pt. II was a transitional provision that is of no further effect.

⁹ The *Acts Amendment (Child Care Services) Act 1987* s. 10 reads as follows:

“

10. Transitional

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

”

¹⁰ The *Statutes (Repeals and Minor Amendments) Act 1997* s. 34(6) reads as follows:

“

(6) A reference in an instrument subsisting immediately before the commencement of this section to the Minister for Community Welfare is to be read, unless the context otherwise requires, as if it had been amended to be a reference to the Minister for Family and Children’s Services.

”

¹¹ On the date as at which this compilation was prepared, the *Sentencing Legislation Amendment and Repeal Act 2003* s. 45 had not come into operation. It reads as follows:

“

45. Community Services Act 1972 amended

- (1) The amendments in this section are to the *Community Services Act 1972*.
- (2) Section 17A(3) is amended by deleting the penalty clause and inserting the following penalty clause instead —

“

Penalty: For a first offence, \$2 000 and a daily penalty of \$200.
For a subsequent offence, \$4 000 and a daily penalty of \$400.

”

”

¹² On the date as at which this compilation was prepared, the *Children and Community Services Act 2004* s. 250(1)(b) had not come into operation. It reads as follows:

“

250. Repeal, transitional and savings provisions

- (1) The following Acts are repealed —
 -
 - (b) the *Community Services Act 1972*;

”

¹³ On the date as at which this compilation was prepared, the *Children and Community Services Act 2004* s. 250(3) which gives effect to Sch. 1, had not come into operation. It reads as follows:

“

250. Repeal, transitional and savings provisions

- (3) Schedule 1 has effect in relation to the repeals effected by subsection (1).

”

Schedule 1 reads as follows:

“

Schedule 1 — Transitional and savings provisions

[s. 250(3)]

Division 1 — Introductory matters

1. Meaning of terms used in this Schedule

In this Schedule, unless the contrary intention appears —

“**authorisation**” means —

- (a) an approval under the *Child Welfare Act 1947* section 111; or
- (b) a licence under the *Child Welfare Act 1947* section 112;

“**commencement day**” means the day on which section 250 comes into operation;

“**existing appeal**” means an appeal under the *Children’s Court of Western Australia Act 1988* section 42(1) or 43(4) that has not been finally determined before commencement day;

“**existing order**” means an order made under the *Child Welfare Act 1947* section 30 that is in force immediately before commencement day;

“**existing proceedings**” means proceedings under the *Child Welfare Act 1947* section 30 that have not been finally determined before commencement day;

“**extended order**” means an existing order that applies to a child after the child reaches 18 years of age because of an extension under the *Child Welfare Act 1947* section 49(1);

“**repealed Act**” means an Act repealed by section 250.

2. Interpretation Act 1984 not affected

The provisions of this Schedule do not affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by section 250.

Division 3 — Provisions related to repeal of *Community Services Act 1972*

17. Status of Ministerial Body

The Community Development Ministerial Body established by section 18 is a continuation of, and the same legal person, as the body corporate established by the *Community Services Act 1972* section 6 as in force before commencement day.

18. Licences and permits under s. 17B

- (1) A licence or permit issued under the *Community Services Act 1972* section 17B that is in force immediately before commencement day has effect on and after that day as if it were a licence issued under Part 8.

- (2) A licence or permit referred to in subclause (1) has effect, under and subject to this Act, for the remainder of the period specified in the licence or permit.

19. Existing applications

An application for a licence or permit under the *Community Services Act 1972* section 17B that has not been finally determined immediately before commencement day is to be dealt with and determined as if it were an application for a licence under Part 8.

20. Appeals under s. 17C

An appeal under the *Community Services Act 1972* section 17C that has not been finally determined immediately before commencement day is to be dealt with and determined as if that Act had not been repealed.

21. Bodies established under s. 22

- (1) A board, committee or council established under the *Community Services Act 1972* section 22 that is in existence immediately before commencement day continues on and after that day as an advisory body under section 27.
- (2) A person who is a member of a board, committee or council referred to in subclause (1) immediately before commencement day continues in office on and after that day for the remainder of the term of his or her appointment.
- (3) An order under the *Community Services Act 1972* section 22(1) that is in force immediately before commencement day has effect on and after that day as if it were an instrument made by the Minister under section 27(5).

Division 5 — General

24. References to repealed Acts

If in a written law or other document or instrument there is a reference to a repealed Act, the reference is to be read, unless the context otherwise requires, as if it had been amended to be a reference to this Act.

”

¹⁴ On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 142, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

142. Other amendments to various Acts

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

”

Schedule 2 cl. 11 reads as follows:

“

Schedule 2 — Other amendments to Acts

11. Community Services Act 1972

s. 17C	Delete “Local Court” in the 4 places where it occurs and in each place insert instead — “ Magistrates Court ”.
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”

¹⁵ Footnote no longer applicable.

¹⁶ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administration Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.