

Western Australia

**Child Care Services (Family Day Care)
Regulations 2006**

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Child Care Services (Family Day Care) Regulations 2006

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Child Care Services (Family Day Care) Regulations 2006

Part 1 — Preliminary

1. Citation

These regulations are the *Child Care Services (Family Day Care) Regulations 2006*¹.

*[Regulation 1 amended in Gazette 1 Mar 2006 p. 937;
7 Aug 2007 p. 4034.]*

2. Commencement

These regulations come into operation on the day on which the *Children and Community Services Act 2004* section 250 comes into operation¹.

3. Terms used in these regulations

In these regulations, unless the contrary intention appears —

“care session” means a discrete period during which children are in the care of a service;

“current assessment notice” means an assessment notice issued under the *Working with Children (Criminal Record Checking) Act 2004* section 12(1)(a) not more than 3 years before the material time;

“enrolled child”, in relation to a service, means a child for whom the service is provided;

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“family day care licence” means a licence granted under section 13 authorising the provision of a service;

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

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

“licence” means a family day care licence;

“licensee” means the holder of a licence;

“place” means —

- (a) the place specified in a licence as the place at which a service is authorised to be provided; and
- (b) in relation to an application for a licence, the place at which the applicant for the licence proposes to operate the service to which the application relates;

“proposed supervising officer” means a person in respect of whom an application is made under regulation 11;

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

“section” means a section of the Act;

“service” means a family day care service provided for a child who has not commenced a secondary programme;

“volunteer” means a person who is not a supervising officer and who has reached 18 years of age;

“water activity” means swimming or any other activity in a body of water;

“working day” means a day that is not a Saturday, Sunday, public holiday or public service holiday.

*[Regulation 3 amended in Gazette 1 Mar 2006 p. 937-8;
8 Dec 2006 p. 5380; 7 Aug 2007 p. 4034.]*

4. Saving

Nothing in these regulations limits the operation of local laws made under the *Health Act 1911* or the *Local Government Act 1995* or affects any lawful requirement of the Director of Operations appointed under the *Fire Brigades Act 1942*.

5. Service prescribed

A service is prescribed as a type of child care service.

[Regulation 5 inserted in Gazette 1 Mar 2006 p. 938; amended in Gazette 7 Aug 2007 p. 4034.]

Part 2 — Licences

Division 1 — Prescribed matters

6. Prescribed qualifications: section 12(2)(c)

For the purposes of section 12(2)(c), first aid qualifications are prescribed as a qualification for an individual applicant for a licence.

[Regulation 6 amended in Gazette 7 Aug 2007 p. 4034.]

7. Prescribed details: section 33

For the purposes of section 33, the following details are prescribed —

- (a) the name of the licensee;
- (b) the location of the place at which the service is authorised to be provided;
- (c) the period for which the licence has effect;
- (d) the maximum number of children who may attend a care session and any other conditions to which the licence is subject under section 19(1).

*[Regulation 7 amended in Gazette 1 Mar 2006 p. 939;
7 Aug 2007 p. 4035.]*

Division 2 — Applications

8. Prescribed time for renewal applications

For the purposes of section 22(2)(b), the prescribed time is not less than 60 days before the licence expires.

[Regulation 8 amended in Gazette 7 Aug 2007 p. 4035.]

9. Documents and information to accompany application

- (1) Under section 11(b) the following documents and information are prescribed —

- (a) a criminal record check on the applicant issued not more than 6 months before the date of the application;
 - (b) a statement by the applicant indicating whether or not he or she has been convicted of a prescribed offence in the period since the criminal record check was issued;
 - (c) a copy of the applicant's qualifications prescribed under regulation 6;
 - (d) a statement by the applicant indicating the time he or she has been engaged in providing children's, educational or human services;
 - (e) a financial assessment in a form approved by the CEO;
 - (f) a site plan, drawn to a scale of not less than 1:500, showing the location of each building on the land comprising the place where the service is to be provided;
 - (g) a plan of the building or buildings at the place, drawn to a scale of not less than 1:100, showing the use to which each part of the building or buildings will be put;
 - (h) if there is a swimming pool at the place, a statement by the applicant indicating whether or not the place complies with the requirements of the *Building Regulations 1989* Part 10.
- (2) Under section 22(2)(c) the following documents and information are prescribed —
- (a) a criminal record check on the applicant issued not more than 6 months before the date of the application;
 - (b) a statement by the applicant indicating whether or not he or she has been convicted of a prescribed offence in the period since the criminal record check was issued;
 - (c) a financial assessment in a form approved by the CEO;
 - (d) a copy of the applicant's qualifications prescribed under regulation 6.

*[Regulation 9 amended in Gazette 1 Mar 2006 p. 939;
7 Aug 2007 p. 4035.]*

10. Change of place

- (1) The licensee may apply under section 32 to amend the licence so that it specifies a different place at which the service is authorised to be provided.
- (2) An application under subregulation (1) must be made by the licensee in a form approved by the CEO.
- (3) An application under subregulation (1) must be accompanied by the documents and information referred to in regulation 9(1)(f), (g) and (h).

*[Regulation 10 amended in Gazette 1 Mar 2006 p. 939;
7 Aug 2007 p. 4035.]*

11. Application for person to act in place of licensee and transitional

- (1) A licensee must not appoint a person to act in place of the licensee without the prior written approval of the CEO.
- (2) An application for approval of a person under subregulation (1) must be made by the licensee in a form approved by the CEO.
- (3) An application must be accompanied by —
 - (a) the documents and information referred to in regulation 9(1)(a), (b), (c) and (d) as if a reference in those paragraphs to the applicant were a reference to the proposed supervising officer; and
 - (b) information about any condition relating to the health of the proposed supervising officer that could affect his or her ability to supervise and control on a day-to-day basis the provision of the service to which the application relates.
- (4) The CEO must not give approval unless the CEO is satisfied that the licence would have been granted under section 15 if the person to act in the place of the licensee had been the applicant for the licence.

[(5) repealed]

- (6) Subregulation (3) does not apply in relation to a person who has been approved by the CEO on the application of another licensee if that approval has not been withdrawn.
- (7) A person who immediately before the day on which these regulations come into operation was approved under the *Community Services (Child Care) Regulations 1988*² regulation 7A to provide relief family day care for a licensee is to be taken to have been appointed to act in place of the licensee with the approval of the CEO until the licence expires unless the approval is sooner withdrawn by the CEO.

[Regulation 11 amended in Gazette 1 Mar 2006 p. 939; 8 Dec 2006 p. 5380; 7 Aug 2007 p. 4035.]

Division 3 — Matters ancillary to applications

12. Referees

- (1) The referees named for a person in an application for a licence or under regulation 11 (the “**subject**”) must include —
- (a) a referee to whom the subject is known, and who has had experience in children’s services; and
 - (b) a referee who is a previous employer of the subject, or who has worked with him or her in a paid or unpaid capacity.
- (2) A person is not eligible to act as a referee for a subject if the person is —
- (a) an employee of the subject;
 - (b) related, married, or related by marriage, to the subject;
 - (c) a de facto partner of the subject; or
 - (d) the applicant for the licence or under regulation 11, as the case may be.

13. Advertisement of application for licence

- (1) An applicant for a licence must arrange for notice of the application to be published in an edition of *The West Australian* newspaper.
- (2) The notice must be published within 28 days after the date on which the application was made.
- (3) The notice, in a form approved by the CEO, must include the following —
 - (a) the full name and residential address of the applicant;
 - (b) a statement to the effect that an objection to the issue of the licence may be made in writing to the CEO, at the address specified in the advertisement, within 14 days after the date on which the advertisement is published.
- (4) The CEO must not grant a licence unless the CEO has received proof that the applicant has complied with this regulation.

[Regulation 13 amended in Gazette 8 Dec 2006 p. 5380.]

[14. Repealed in Gazette 8 Dec 2006 p. 5380.]

15. Objections

- (1) Any person may object to the grant of a licence on the ground that the applicant is not a fit and proper person to provide or be involved in the provision of a child care service.
- (2) An objection must —
 - (a) be made to the CEO in writing; and
 - (b) set out the grounds on which it is made.
- (3) If an objection is made to the CEO within 14 days after the advertisement is published under regulation 13, the CEO must consider the objection before deciding whether or not to grant the licence.

- (4) If an objection is made to the CEO at any other time, the CEO may consider it.

[Regulation 15 amended in Gazette 8 Dec 2006 p. 5380.]

Division 4 — Surrenders

16. Surrender of licences

- (1) A licensee may at any time by notice in writing to the CEO surrender the licence.
- (2) Subregulation (1) does not apply if a matter relating to the licensee has been referred to the State Administrative Tribunal under section 29(2) and the matter has not been disposed of by the Tribunal.

[Regulation 16 amended in Gazette 7 Aug 2007 p. 4035.]

Part 3 — Obligations of licensee

Division 1 — General obligations

17. Exemptions

- (1) The CEO may, in special circumstances in a particular case, exempt a licensee from a provision of these regulations for the period, and subject to the conditions, if any, specified in the exemption.
- (2) An exemption must —
 - (a) be in writing;
 - (b) identify the provision of the regulations to which the exemption relates; and
 - (c) specify the period for which it is to be in force.
- (3) An exemption may be expressed to be in force —
 - (a) for as long as the special circumstances set out in the exemption continue; or
 - (b) for as long as a condition specified in the exemption is complied with.
- (4) The CEO may renew or revoke an exemption.
- (5) An exemption stops being in force at the end of the period specified in it under subregulation (2)(c) unless it is sooner revoked.
- (6) During the period an exemption is in force, the licensee must ensure that the exemption is displayed in a prominent position at or near the main entrance to the place.
Penalty: a fine of \$2 000.

18. Notification of change of circumstances

- (1) A licensee must immediately notify the CEO in writing if any of the following happens —

- (a) the licensee ceases to occupy the place specified in the licence;
 - (b) the licensee ceases permanently or temporarily to provide the service;
 - (c) the licensee is or will for any reason be unable for more than 30 working days in any calendar year to supervise and control on a day-to-day basis the provision of the service;
 - (d) the licensee, a supervising officer or a usual occupant of the place is convicted of a prescribed offence;
 - (e) a person becomes a usual occupant of the place;
 - (f) the licensee modifies or installs a swimming pool at the place;
 - (g) the licensee becomes aware of any change to any other fact or circumstance relating to or affecting the provision of the service.
- (2) The notice must include particulars of the change of circumstances, including, where relevant, the name of the new usual occupant.

Penalty: a fine of \$2 000.

[Regulation 18 amended in Gazette 1 Mar 2006 p. 939.]

19. Notification of harm to enrolled child

- (1) A licensee must notify the CEO of —
- (a) the death of an enrolled child during a care session and the circumstances in which the death occurred; and
 - (b) an injury to an enrolled child during a care session that results in the child being admitted to a hospital, the nature of the injury and the circumstances in which it occurred.

[(c) deleted]

- (1a) A licensee must notify the chief executive officer of the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004* of any allegation of abuse, neglect or assault, including sexual assault, of an enrolled child during a care session, or of an offence under *The Criminal Code* Chapter XXII committed against an enrolled child during a care session, that is made against the licensee, a supervising officer, a usual occupant of the place or a volunteer.
- (2) A notification under subregulation (1) or (1a) must be given within one working day after the day on which the death or injury occurred or the allegation was made, as the case requires.
- (3) A licensee must notify the chief executive officer of the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004* of the outcome of any investigation into an allegation referred to in subregulation (1a).

Penalty: a fine of \$6 000.

[Regulation 19 amended in Gazette 7 Aug 2007 p. 4035-6.]

20. Visual images of enrolled child

- (1) A licensee must ensure that a visual image of an enrolled child is not taken or recorded at the place without the written consent of the child's parent.
- (2) A licensee must ensure that a visual image of an enrolled child taken or recorded at the place for the purpose of monitoring an enrolled child is not —
- (a) transmitted on the Internet; or
 - (b) removed from the place.
- (3) A licensee must not use a visual image of an enrolled child taken or recorded at the place for any purpose without the written consent of the child's parent.

- (4) Subregulation (1) does not apply to the taking or recording of a visual image —
 - (a) by a licensing officer when exercising a power or performing a duty under the Act; or
 - (b) for the purpose of monitoring an enrolled child.
- (5) Subregulation (3) does not apply to the use of a visual image for the purpose of monitoring an enrolled child.

Penalty: a fine of \$3 000.

[Regulation 20 amended in Gazette 8 Dec 2006 p. 5380-1.]

Division 2 — Supervision requirements

21. Presence of the supervising officer at the place

- (1) For the purposes of section 18, the supervising officer may be absent from the place at which the service is provided at the times when the service is provided in an emergency situation.
- (2) If the supervising officer is absent from the place in an emergency situation and enrolled children remain at the place during his or her absence, the licensee must ensure that —
 - (a) an adult supervises the enrolled children remaining at the place during the supervising officer's absence; and
 - (b) a parent of an enrolled child remaining at the place is notified that the supervising officer is absent from the place and that the child is being supervised by an adult.

Penalty: a fine of \$6 000.

*[Regulation 21 amended in Gazette 1 Mar 2006 p. 939;
7 Aug 2007 p. 4036.]*

22. Supervision of enrolled children

- (1) A licensee must ensure that enrolled children are supervised in a manner that is sufficient to ensure the wellbeing of the children and is appropriate to —

- (a) the children's stage of development; and
 - (b) the activity in which the children are engaging.
- (2) Without limiting subregulation (1), a licensee must ensure that an ill or injured child is under the direct supervision of a supervising officer.
- Penalty: a fine of \$6 000.

Division 3 — Requirements for place

23. Exits

- (1) A licensee must ensure that doors giving direct access from the place to the street —
- (a) have handles positioned between 1 300 mm and 1 500 mm from the floor; or
 - (b) are locked in a manner that does not prevent effective evacuation of the place.
- (2) A licensee must ensure that there are at least 2 exits from the place, and that those exits are as widely separated as practicable and are readily accessible.
- Penalty: a fine of \$4 000.

[Regulation 23 amended in Gazette 8 Dec 2006 p. 5381.]

24. Shade

A licensee must ensure that outdoor space used for play by an enrolled child is provided with adequate shade in accordance with guidelines approved by the CEO.

Penalty: a fine of \$4 000.

25. Fencing

- (1) A licensee must ensure that the place is enclosed by a fence, or an equivalent barrier approved by the CEO, of not less than 1 200 mm in height.

- (2) A licensee must ensure that a gate in a fence, or in an equivalent barrier, referred to in subregulation (1) is not less than 1 200 mm in height.
- (3) A licensee must ensure that a gate in a fence at the place that offers access from the place or to a hazard is equipped with an efficient self-locking mechanism or lock.
- (4) A licensee must ensure that a place that is adjacent to or provides access to any creek, river, dam or similar body of water is separated from that body of water by a fence that conforms with the requirements of subregulations (1), (2) and (3).

Penalty: a fine of \$4 000.

26. Swimming pools

- (1) A licensee must ensure that no enrolled child has access to or uses a swimming pool at the place.
- (2) Subject to subregulation (3), a licensee must ensure that a swimming pool at the place is separated from all other parts of the place, including outdoor playing space, by an enclosure that complies with the requirements of the *Building Regulations 1989* Part 10.
- (3) If an enclosure surrounding a swimming pool consists in part of a door or window permitting access to the enclosed area, the licensee must ensure that the door or window —
 - (a) is locked; or
 - (b) is otherwise secured,in a manner approved by the CEO, when enrolled children are present at the place.
- (4) The CEO may, by written notice, require a licensee to provide a written statement indicating whether or not the place complies with the requirements of the *Building Regulations 1989* Part 10.

- (5) A licensee must comply with a requirement under subregulation (4).

Penalty: a fine of \$4 000.

27. Smoke or fire detectors

- (1) A licensee must ensure that the place is equipped with smoke or fire detection devices fitted in accordance with the manufacturer's instructions.

- (2) A licensee must ensure that a device required under subregulation (1) is maintained in working order.

Penalty: a fine of \$4 000.

28. Kitchen

A licensee must ensure that the place has a kitchen equipped with at least a sink, stove, refrigerator and supply of hot water.

Penalty: a fine of \$3 000.

29. Laundry

- (1) A licensee must ensure that the place has a laundry area.

- (2) A licensee must ensure that the laundry is equipped with a washing machine, trough, hot water supply and sink or other facility suitable for dealing with soiled nappies.

- (3) If nappies are not laundered at the place, a licensee must ensure that a suitable sealed container for soiled nappies is provided.

Penalty: a fine of \$3 000.

30. Windows

- (1) A licensee must ensure that any glazed area at the place that is —

(a) accessible to enrolled children; and

(b) less than 1 000 mm above the floor,

is —

- (c) fitted with safety glass or glass treated with a product that prevents the glass from shattering or breaking; or
 - (d) effectively guarded by rails or barriers to prevent a child striking or falling against the glass.
- (2) If an area of the place is glazed in accordance with a requirement of subregulation (1)(c), a licensee must keep written evidence at the place that the glazed area complies with that requirement.
- (3) A licensee must ensure that windows at the place, when opened, do not create a hazard to children.
- (4) Subregulations (1) and (2) do not apply to the holder of a licence or permit to which section 59 applies if, immediately before the day on which these regulations came into operation, the holder's premises complied with the requirements of the *Community Services (Child Care) Regulations 1988*² regulation 47(1).

Penalty: a fine of \$3 000.

[Regulation 30 amended in Gazette 7 Aug 2007 p. 4036-7.]

31. Bathroom facilities

- (1) A licensee must ensure that the place has —
- (a) one adult lavatory with a firm step and a junior seat; and
 - (b) one hand basin with a firm step so as to provide reasonable child access.
- (2) If enrolled children who have not reached 3 years of age are cared for by a service, a licensee must ensure that the following are provided at the place —
- (a) a changing bench or mat with a washable top;
 - (b) one sink type bath that is —
 - (i) supplied with hot and cold water; and
 - (ii) positioned adjacent to the changing bench or mat referred to in paragraph (a).

Penalty: a fine of \$3 000.

[Regulation 31 amended in Gazette 1 Mar 2006 p. 939.]

32. Hot water

A licensee must ensure that every hot water tap to which an enrolled child has access at the place is —

- (a) thermostatically controlled at a temperature of less than 42°C; or
- (b) fitted with a device approved by the CEO which effectively prevents the operation of the tap by an enrolled child.

Penalty: a fine of \$3 000.

33. Storage

- (1) A licensee must ensure that the place has shelves or other facilities for indoor and outdoor storage of equipment and consumable items for the use of the service and for each child's personal clothing and possessions.
- (2) A licensee must ensure that shelves or other facilities provided under subregulation (1) are so positioned as to enable a child who has reached 3 years of age to have ready access to their personal clothing and possessions.

Penalty: a fine of \$2 000.

[Regulation 33 amended in Gazette 1 Mar 2006 p. 939.]

34. Electrical installations

- (1) A licensee must ensure that aerial power supply cables operating at voltages in excess of extra low voltage are located at the place so that clearances from mesh fences, gates and similar climbable structures are in accordance with Australian Standard AS/NZS 3000:2000 Electrical installations — Buildings, structures and premises (known as the SAA Wiring Rules).

- (2) A licensee must ensure that cable pits and similar installations at the place are provided with lids which by weight or mechanical means restrict access.

Penalty: a fine of \$4 000.

35. General purpose power outlets

A licensee must ensure that a general purpose power outlet at the place —

- (a) is installed at a minimum height of 1 200 mm above the floor;
- (b) is fitted with approved integral safety shutters or with an earth leakage circuit breaker; or
- (c) is fitted with safety plugs approved by the CEO or otherwise protected in a manner approved by the CEO.

Penalty: a fine of \$4 000.

36. Telephone

A licensee must ensure that a telephone service is connected to the place.

Penalty: a fine of \$2 000.

37. Heating

- (1) If a radiant type electrical heater is used in play or rest rooms at the place, a licensee must ensure that it is 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 below the ceiling.
- (2) A licensee must ensure that a portable kerosene heater is not used at the place.
- (3) A licensee must ensure that an oil-filled, fan type or similar low surface temperature heater is not used at the place unless the appliance —
 - (a) is fitted with its own temperature safety thermostat;

- (b) does not constitute a fire hazard; and
 - (c) is effectively shielded or guarded so that live parts cannot be probed by a child.
- (4) A licensee must ensure that a fire or heating apparatus at the place (other than a low surface temperature heater) is effectively shielded or guarded when in use to prevent —
- (a) direct contact by or access to any child; and
 - (b) the emission of any sparks or flame.

Penalty: a fine of \$4 000.

[Regulation 37 amended in Gazette 8 Dec 2006 p. 5381.]

38. Fans

- (1) A licensee must ensure that a wall mounted fan at the place —
- (a) has blade guards fitted in accordance with the manufacturer's instructions; and
 - (b) is located so that blades are at least 2 000 mm above the floor.
- (2) A licensee must ensure that a ceiling mounted fan at the place that has blades 2 400 mm or less above the floor below it is not operated if —
- (a) an enrolled child is present at the place; and
 - (b) an enrolled child has access to the area in which the fan is located.
- (3) A licensee must ensure that a freestanding fan is not used in indoor or outdoor play areas at the place.
- (4) A licensee must ensure that a freestanding fan at the place is located so that children are adequately protected from inadvertent physical contact with the blades.

Penalty: a fine of \$3 000.

[Regulation 38 amended in Gazette 8 Dec 2006 p. 5381.]

Division 4 — Other obligations relating to the place

39. Display of licence

- (1) A licensee must display the licence in a prominent position at or near the main entrance to the place.
- (2) A person must not alter or deface a licence.
Penalty: a fine of \$2 000.

40. First aid kit

- (1) A licensee must ensure that a fully equipped and properly maintained first aid kit is kept at the place at all times.
- (2) A licensee must ensure that a first aid kit kept for the purposes of subregulation (1) includes the following items —
 - (a) a triangular bandage;
 - (b) a crepe bandage;
 - (c) an adequate variety of sterile wound dressings;
 - (d) a resuscitation face shield;
 - (e) a notebook and pencil;
 - (f) scissors;
 - (g) disposable gloves.

Penalty: a fine of \$2 000.

41. Furniture

A licensee must ensure that adequate furniture is available at the place to meet the physical and developmental needs of children attending the place.

Penalty: a fine of \$2 000.

42. Storage of tools and dangerous materials

- (1) A licensee must ensure that tools at the place are stored so that they are inaccessible to children.

- (2) A licensee must ensure that cleaning supplies, first aid supplies and other toxic materials at the place are —
 - (a) clearly identified as such; and
 - (b) stored so that they are inaccessible to children.
- (3) A licensee must ensure that flammable materials at the place are stored separately from anything that constitutes or is likely to constitute a fire hazard.
Penalty: a fine of \$4 000.

43. Playground equipment

A licensee must ensure that outdoor play equipment at the place does not pose a hazard to children because of its design, manufacture, installation or use.

Penalty: a fine of \$2 000.

44. Animals on place

- (1) A licensee must ensure that an animal or bird kept at the place is maintained in a clean and healthy condition.
- (2) If an animal or bird is kept at the place, a licensee must ensure that —
 - (a) the place has an area where the animal or bird can be kept that is separate and apart from any area used by children; and
 - (b) enrolled 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.
- (3) If an animal or bird is kept at the place, the CEO may direct the licensee to keep it in the separate area referred to in subregulation (2)(a).
- (4) The licensee must comply with a direction under subregulation (3).
Penalty: a fine of \$2 000.

45. Plants

A licensee must identify any poisonous vegetation at the place and ensure that the vegetation is not accessible to children.

Penalty: a fine of \$2 000.

46. Cleanliness, maintenance and repair of place

- (1) A licensee must ensure that the place and all equipment and furnishings at the place are maintained in a thoroughly safe, clean and hygienic condition and in good repair.
- (2) A licensee must ensure that the place is kept free from rodents, cockroaches and other vermin.

Penalty: a fine of \$3 000.

47. People convicted of a prescribed offence

- (1) A licensee must ensure that a person who —
 - (a) has been convicted of a prescribed offence; and
 - (b) does not have a current assessment notice,

is not permitted to attend the place during a care session without the prior written approval of the CEO.

Penalty: a fine of \$5 000.

- (2) In proceedings for an offence under subregulation (1), it is a defence for the licensee to show that the licensee did not know, and could not reasonably be expected to have known, that the person had been convicted of a prescribed offence.

48. Application to modify the place

- (1) A licensee must not modify the place without the prior written approval of the CEO.
- (2) The approval of the CEO under subregulation (1) may be given subject to conditions.

- (3) A licensee must comply with any condition imposed under subregulation (2).
- (4) An application for approval under subregulation (1) must —
 - (a) be in a form approved by the CEO;
 - (b) be lodged with the CEO at least 30 days before the proposed modification is expected to begin;
 - (c) show that the wellbeing of children attending the service will not be affected by the modification; and
 - (d) show that the place as modified complies with Division 3.
- (5) On completion of the modification of the place, a licensee must give the CEO a copy of any current certificate of classification relating to the place issued under the *Building Regulations 1989* Part 5.
Penalty: a fine of \$2 000.

Division 5 — Operating procedures

49. Compliance with procedures

A licensee must ensure that —

- (a) copies of the procedures developed under this Division are made available to a supervising officer and parents of enrolled children; and
- (b) a supervising officer is aware of the procedures and follows them as far as practicable.

Penalty: a fine of \$3 000.

50. Emergency procedures and rehearsals

- (1) A licensee must develop and set down in writing —
 - (a) evacuation and emergency procedures to be followed by a supervising officer in case of fire, natural disaster or other emergencies; and

(b) appropriate procedures to be followed by a supervising officer for the care of ill or injured children.

- (2) A licensee must ensure that a rehearsal of the evacuation and emergency procedures set down under subregulation (1) is conducted at least twice in each calendar year.

Penalty: a fine of \$3 000.

51. Behaviour management procedures

- (1) A licensee must develop and set down in writing appropriate procedures to be followed by a supervising officer in managing the behaviour of enrolled children.
- (2) A licensee must develop and set down in writing appropriate procedures to be followed by a supervising officer in managing the behaviour of individuals, other than enrolled children, who are violent or abusive towards a supervising officer or enrolled children.

Penalty: a fine of \$2 000.

52. Procedure for dealing with parent's concerns

A licensee must develop and set down in writing appropriate procedures to be followed by a supervising officer in dealing with concerns of parents.

Penalty: a fine of \$2 000.

53. Transport procedures

A licensee must develop and set down in writing appropriate procedures for the transport of enrolled children that include, but are not limited to —

- (a) procedures for supervising enrolled children while walking to and from a vehicle and while travelling in a vehicle;
- (b) the kinds of vehicle which may be used to transport enrolled children;

- (c) procedures for engaging and utilising the services of transport providers and volunteers;
- (d) rules relating to the behaviour of enrolled children while they are being collected or transported and strategies for enforcing those rules; and
- (e) procedures in case of a breakdown of a vehicle or an accident or other emergency.

Penalty: a fine of \$2 000.

Division 6 — Administration of service

[Heading amended in Gazette 1 Mar 2006 p. 938.]

54. Enrolment form

- (1) A licensee must ensure that an enrolment form is kept for each child who attends the service.
- (2) The enrolment form must, as far as is practicable, include the following —
 - (a) the full name, date of birth and address of the child;
 - (b) the full name of each parent;
 - (c) the residential address and telephone number of each parent;
 - (d) the address and telephone number of each parent's place of employment;
 - (e) the signature of a parent;
 - (f) the full name and telephone number of a person authorised by a parent to collect the child from the place;
 - (g) the full name, address and telephone number of a person, other than a parent, who may be contacted in an emergency;
 - (h) the name, address and telephone number of the child's medical practitioner or hospital;
 - (i) a parent's written authorisation for medical attention to be sought for the child if required in an emergency;

- (j) any written authorisation or permission referred to in regulation 70(3), 74 or 80;
 - (k) details of any court order relating to —
 - (i) the long-term care, welfare and development of the child;
 - (ii) the residence of the child; or
 - (iii) contact of a person with the child;
 - (l) relevant details of the child's medical history including current immunisation status and any allergies suffered by the child;
 - (m) any other relevant information relating to the child.
- (3) A licensee must ensure that the enrolment form is updated annually.
- (4) A licensee must not allow a child to attend the service unless the supervising officer has sighted the child's birth certificate, extract of birth certificate or equivalent document.
- Penalty: a fine of \$3 000.

[Regulation 54 amended in Gazette 1 Mar 2006 p. 939.]

55. Record of medication

- (1) A licensee must ensure that a record is kept of any medication administered to an enrolled child during a care session.
- Penalty: a fine of \$3 000.
- (2) A record of medication must 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.

56. Record of injury or accident

- (1) A licensee must ensure that a record is kept of —
 - (a) any injury to or accident involving an enrolled child during a care session, including details of the nature and circumstances of the injury or accident;
 - (b) any treatment given to an enrolled child who is injured or becomes ill during a care session; and
 - (c) the death of an enrolled child during a care session, including details of the circumstances in which the child died.
- (2) A licensee must ensure that —
 - (a) a record under subregulation (1)(a) or (b) concerning a child is retained until the child reaches 24 years of age; and
 - (b) a record under subregulation (1)(c) is retained for a period of 6 years from the day on which the record was made.

Penalty: a fine of \$3 000.

57. Record of attendance

- (1) A licensee must ensure that a record of attendance is kept for each care session, including —
 - (a) the times of arrival and departure of each enrolled child; and
 - (b) the signature of the person responsible for verifying the accuracy of the record.
- (2) A licensee must ensure that a record of attendance is retained for a period of 3 years from the day on which the record was made.

Penalty: a fine of \$3 000.

58. Record of excursions

- (1) A licensee must ensure that a record of each excursion is kept, including the following —
 - (a) the name of each enrolled child who participated in the excursion;
 - (b) for each of those children, the authorisation given by a parent of the child under regulation 70(1)(b)(i);
 - (c) the destination;
 - (d) the times of departure from and return to the place;
 - (e) a copy of the written plan required by regulation 70(1)(a).
- (2) A licensee must ensure that a record of an excursion is retained for a period of 3 months from the day of the excursion.

Penalty: a fine of \$2 000.

59. Other records

- (1) A licensee must ensure that the following are kept —
 - (a) a record of each rehearsal of emergency procedures conducted in accordance with regulation 50(2);
 - (b) written particulars of the programme of activities provided under regulation 67.
- (2) A licensee must ensure that —
 - (a) a record under subregulation (1)(a) is retained for a period of 3 years from the day on which the record was made; and
 - (b) a record under subregulation (1)(b) is retained for a period of 3 months.

Penalty: a fine of \$2 000.

60. Storing records

- (1) A licensee must ensure that a record required to be kept under regulation 54, 55, 56, 57, 58 or 59 relating to an enrolled child is kept in an up-to-date form and in a safe and secure area at the place.
- (2) A licensee must ensure that a record required to be kept under regulation 54, 55, 56, 57, 58 or 59 relating to a former enrolled child is kept in a safe and secure location.

Penalty: a fine of \$2 000.

61. Confidentiality of records

A licensee must ensure that information recorded under regulation 54, 55, 56, 57, 58 or 59 is not directly or indirectly disclosed or communicated to another person except —

- (a) as required or permitted under the Act or any other written law; or
- (b) with the written authorisation of the person or, in the case of a child, a parent of the child, to whom the information relates.

Penalty: a fine of \$5 000.

62. Falsification of records

A person must not falsify a record kept under regulation 54, 55, 56, 57, 58 or 59.

Penalty: a fine of \$5 000.

63. Information for parents

- (1) A licensee must ensure that the following information is available in writing to a parent upon request —
 - (a) a statement of the service philosophy;
 - (b) an outline of the service programme;
 - (c) times and days of opening;
 - (d) fees;

- (e) the service practice and policy regarding excursions;
 - (f) the service practice and policy regarding delivery and collection of enrolled children;
 - (g) the service procedures for managing the behaviour of enrolled children;
 - (h) the service practice and policy regarding food, nutrition and the dietary needs of individual enrolled children;
 - (i) the service practice and policy regarding sun protection for enrolled children;
 - (j) the service practice and policy regarding illness and infections, including any practice or policy relating to the exclusion of enrolled children suffering from a communicable disease;
 - (k) the service practice and policy regarding the appointment of a person to act in place of the licensee;
 - (l) emergency and evacuation procedures;
 - (m) procedures for dealing with concerns of parents;
 - (n) the periods of time for which particular records are required to be retained under regulations 56, 58 and 59;
 - (o) the name, address and telephone number of the Child Care Licensing and Standards Unit of the Department.
- (2) A licensee must ensure that the particulars referred to in subregulation (1)(m) and (o) are displayed in a prominent position at or near the main entrance to the place.
- (3) A licensee must ensure that a current copy of the Act and these regulations are available to parents upon request.

Penalty: a fine of \$2 000.

[Regulation 63 amended in Gazette 1 Mar 2006 p. 939.]

64. Parent visit

A licensee must permit a parent who is responsible at the time for the attendance of an enrolled child at the service to visit the child at the place at any reasonable time.

Penalty: a fine of \$2 000.

[Regulation 64 amended in Gazette 1 Mar 2006 p. 939.]

65. Insurance

- (1) A licensee must hold a current policy of insurance (the “**policy**”) against the public liability of that person in respect of the provision of the service.
- (2) The insured amount must be adequate, in the opinion of the CEO, to cover any potential liability of the licensee in relation to the operation of the service.
- (3) A licensee must keep at the place evidence that the policy is current.

Penalty: a fine of \$3 000.

[Regulation 65 amended in Gazette 1 Mar 2006 p. 939.]

Part 4 — Operating the service

[Heading amended in Gazette 1 Mar 2006 p. 938.]

Division 1 — Children at care session

66. Child who is not enrolled child or a child of the licensee

A licensee must ensure that a child, other than an enrolled child or a child of the licensee, is not present at the place during a care session unless —

- (a) the child is present on a temporary basis;
- (b) the child is adequately supervised; and
- [(c) deleted]*
- (d) the presence of the child does not affect detrimentally the wellbeing of an enrolled child.

Penalty: a fine of \$2 000.

[Regulation 66 amended in Gazette 1 Mar 2006 p. 938.]

Division 2 — Programmes and behaviour management

67. Programme of activities

- (1) A licensee must ensure the provision of a programme of activities which is developmentally appropriate to the needs of the children attending the service.
- (2) A licensee must ensure that the programme —
 - (a) meets the play and relaxation needs of children;
 - (b) provides a balance of indoor and outdoor activities;
 - (c) includes activities that a child may choose to participate in; and
 - (d) is designed to stimulate and provide for the development of each child's social, cultural, physical, emotional, intellectual, language and creative potential.

- (3) A licensee must ensure that a copy of the programme is prominently displayed in the indoor playing area at the place.
Penalty: a fine of \$3 000.

68. Play equipment and materials

- (1) A licensee must ensure that play equipment and materials are suitable —
- (a) for the development stages of the enrolled children;
 - (b) for the number of enrolled children;
 - (c) to provide for all areas of child development and play; and
 - (d) for carrying out programmes.
- (2) A licensee must ensure that enrolled children using play equipment are supervised at all times.
Penalty: a fine of \$2 000.

69. Managing the behaviour of children

- (1) A licensee must ensure that an enrolled child is given positive guidance directed towards acceptable behaviour.
- (2) A licensee must ensure that an enrolled child is not subjected to any form of corporal punishment, punishment by solitary confinement, punishment by physical restraint or other demeaning, humiliating or frightening punishment.
- (3) A licensee must ensure that an enrolled child taken from an activity for unacceptable behaviour is supervised at all times by the licensee or the supervising officer.
- (4) A licensee must ensure that an enrolled child is protected from bullying, violence and harassment.
Penalty: a fine of \$4 000.

Division 3 — Excursions

70. Excursions from the place

- (1) A licensee must ensure that enrolled children are not taken on an excursion from the place unless —
 - (a) an excursion plan has been prepared in accordance with regulation 72;
 - (b) a parent of each child to be taken on the excursion has, after being advised of the nature, location and date of the excursion, the means of travel to be used, the number of adults going on the excursion and the proposed times of departure from and return to the place —
 - (i) given authorisation for the child to be taken on that excursion; and
 - (ii) provided the licensee with contact details in the event of an emergency;and
 - (c) a list of all those children and the contact details referred to in paragraph (b)(ii) for those children are taken on the excursion.
- (2) A licensee must ensure that a parent's authorisation for the purposes of subregulation (1)(b)(i) has been signed by the parent and includes the following information —
 - (a) the date of the excursion;
 - (b) the destination;
 - (c) the proposed times of departure from and return to the place.
- (3) Subregulation (1) does not apply to an excursion to a local bank, playgroup, shop or park if a parent of each child on the excursion has given permission for the child to go on that excursion or on excursions of that kind.

- (4) If enrolled children are taken on an excursion to a place that has a body of water such as a creek, dam, fountain, lake, pool or river, a licensee must ensure that the children are supervised by at least one supervising officer or volunteer for each multiple of 4 children and for any remainder of fewer than 4.

Penalty: a fine of \$3 000.

71. First aid kit on excursions

- (1) A licensee must ensure that a fully equipped and properly maintained first aid kit containing at least the items listed in regulation 40(2) is taken on all excursions from the place.
- (2) Subregulation (1) does not apply to an excursion referred to in regulation 70(3).

Penalty: a fine of \$2 000.

72. Excursion plans

A licensee must ensure that an excursion plan for the purposes of regulation 70 is in writing and includes details of the following —

- (a) the nature, location and date of the excursion;
- (b) the proposed times of departure from and return to the place;
- (c) transport and supervision arrangements for the excursion;
- (d) the programme of activities (including contingency plans for inclement weather);
- (e) safety measures and emergency plans.

Penalty: a fine of \$2 000.

73. Mobile telephones for excursions

- (1) A licensee who takes enrolled children on an excursion must take a mobile telephone on the excursion and ensure that he or she can be contacted on that telephone at all times during the excursion.

- (2) A licensee must ensure that a supervising officer who takes enrolled children on an excursion has a mobile telephone and can be contacted on that telephone at all times during the excursion.

Penalty: a fine of \$2 000.

74. Transport of enrolled children

A licensee must ensure an enrolled child is not transported in a motor vehicle without the written authorisation of a parent of the child.

Penalty: a fine of \$2 000.

Division 4 — Water activities

75. Additional requirements for water activities

If enrolled children are taken on an excursion from the place to engage in water activities, the requirements of this Division are additional to the requirements of Division 3.

76. Wading or paddling pools at the place

- (1) A licensee must ensure that a wading or paddling pool is not kept at the place unless it can be emptied by one person.
- (2) A licensee must ensure that a wading or paddling pool at the place is emptied and stored while not in use in such a manner that it cannot collect water.

Penalty: a fine of \$3 000.

77. Supervision of water play

A licensee must ensure that any enrolled child engaged in water play such as wading, paddling, vortex or water trolley at the place is directly supervised.

Penalty: a fine of \$3 000.

78. Supervision on water activity excursion

- (1) A licensee must ensure that enrolled children taken on an excursion for a water activity are supervised by at least one supervising officer or volunteer for each enrolled child who is under 3 years of age and one supervising officer or volunteer for each multiple of 2 enrolled children who have reached 3 years of age and for any remainder.
- (2) A licensee must ensure that at least one of the persons supervising enrolled children engaged in a water activity on an excursion has a current basic rescue certificate and a resuscitation certificate or its equivalent.

Penalty: a fine of \$4 000.

Division 5 — Safety and health of enrolled children

79. Long attendance of enrolled child

- (1) A licensee must notify the CEO in writing, before the commencement of the period of care or within 7 days after the completion of the period of care, if an enrolled child is placed in the care of that licensee for a period of more than 18 consecutive hours.
- (2) A licensee must ensure that no enrolled child is placed in the care of that licensee for more than 14 24-hour periods in one calendar year without the prior written approval of the CEO.

Penalty: a fine of \$4 000.

80. Protection of enrolled children leaving the place

- (1) A licensee must ensure that an enrolled child is not permitted to leave the place during or at the end of a care session unless the child is in the care of —
 - (a) the child's parent or a person authorised by the child's parent; or

(b) in the case of an emergency, when a person referred to in paragraph (a) is not available to take charge of the child, a person authorised by the licensee or supervising officer, having due regard to the wellbeing of the child.

- (2) A licensee must ensure that the CEO is notified as soon as practicable if an enrolled child leaves the place in the circumstances referred to in subregulation (1)(b).

Penalty: a fine of \$3 000.

81. Illness or accident to enrolled child

- (1) A licensee must ensure that, except in an emergency, medication is not administered to an enrolled child without the written authority of a parent of the child specifying the name of the medication and the time, quantity and manner of administration of the medication.
- (2) Subregulation (1) does not apply to the self-administration of a non-prescription asthma inhaler.
- (3) A licensee must ensure that an enrolled child or other person is excluded from the place if there are reasonable grounds for suspecting that the child or other person is suffering from a communicable disease.
- (4) When deciding whether to exclude from the place an enrolled child or other person who is suspected of suffering from a communicable disease, the supervising officer may have regard to the guidelines set out in the document entitled *Communicable Disease — Guidelines for Teachers, Local Authorities and Child Care Centres* and published by the Department principally assisting the Minister in the administration of the *Health Act 1911*.
- (5) A licensee must ensure that all reasonable measures are taken to notify parents of enrolled children and visitors to the place of an exclusion under subregulation (3).

- (6) For the purposes of excluding an enrolled child or other person from the place under subregulation (3), the supervising officer may —
- (a) refuse to admit the child or other person to the place;
 - (b) in the case of an unaccompanied child or a child who is already at the place, request a parent of the child to take the child from the place as soon as practicable; or
 - (c) in the case of another person who is already at the place, request the person to leave the place immediately.
- (7) A licensee must ensure that a parent of a child enrolled for a care session on any day is notified on the same day of an illness or injury suffered by the child during the care session, or of the occurrence of an accident involving the child during the care session.

Penalty: a fine of \$4 000.

82. Nutrition and food service

A licensee must ensure that —

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

Penalty: a fine of \$4 000.

[Regulation 82 amended in Gazette 1 Mar 2006 p. 939.]

83. Hygiene standards

A licensee must ensure that a supervising officer observes and maintains reasonable standards of hygiene in the provision of the service.

Penalty: a fine of \$2 000.

[Regulation 83 amended in Gazette 1 Mar 2006 p. 939.]

84. Alcohol and drugs

- (1) A licensee must ensure that no other person who appears to be adversely affected by alcohol, drugs, or any other potentially deleterious substance remains at the place during a care session.
- (2) A licensee must ensure that a person who is at the place during a care session does not —
 - (a) consume alcohol;
 - (b) take or possess illegal drugs; or
 - (c) take or possess any other potentially deleterious substance.

Penalty: a fine of \$3 000.

85. Smoking

A licensee must ensure that a person who is at the place during a care session does not smoke a cigarette, cigar or pipe.

Penalty: a fine of \$3 000.

86. Trampolines

A licensee must ensure that an enrolled child who is using a trampoline at the place is supervised at all times by a person who has reached 18 years of age.

Penalty: a fine of \$4 000.

Part 5 — Other matters

87. Medical examination

- (1) The CEO may, by written notice, require a licensee or supervising officer to undergo a medical examination, within the time specified in the notice.
- (2) The CEO is to set out in the notice the purpose of the medical examination.
- (3) A licensee or supervising officer must comply with a requirement under subregulation (1).
- (4) A licensee or supervising officer who undergoes a medical examination in compliance with a requirement under subregulation (1) must —
 - (a) obtain a report on the examination in a form approved by the CEO; and
 - (b) give a copy of the report to the CEO.

Penalty: a fine of \$2 000.

88. Check on new usual occupant

If the CEO is notified under regulation 18(1)(e) that an adult has become a usual occupant of the place, the CEO must conduct a criminal record check on that person and such other checks on that person's character and background as the CEO considers appropriate for the purpose of determining whether the person is a fit and proper person to associate with children.

[Regulation 88 amended in Gazette 8 Dec 2006 p. 5381.]

89. Notification of convictions

- (1) For the purpose of Schedule 1 item 18 to the Act, a conviction of a licensee for an offence against the Act or these regulations (an “**offence**”) is a prescribed matter.

- (2) If a licensee is convicted of an offence, the CEO must notify the parents of children for whom a service is provided that the licensee has been convicted of that offence.
- (3) For the purposes of giving the notice referred to in subregulation (2), the CEO may require the licensee to give the CEO a list of the names and addresses of the parents.
- (4) A licensee must comply with a requirement under subregulation (3).

Penalty: a fine of \$3 000.

*[Regulation 89 amended in Gazette 1 Mar 2006 p. 939;
7 Aug 2007 p. 4037.]*

90. Continued operation of service in certain circumstances

- (1) In an emergency situation or in circumstances where the licence for the service is suspended or cancelled, the CEO may, in writing, authorise a person to continue to operate a service for a period specified in the authorisation.
- (2) The period specified in the authorisation must not be longer than 3 months.
- (3) A person authorised under subregulation (1) is to be taken to be the licensee for the purposes of the Act and the regulations.

[Regulation 90 inserted in Gazette 1 Mar 2006 p. 938-9.]

Notes

- ¹ This is a compilation of the *Child Care Services (Family Day Care) Regulations 2006* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Children and Community Services (Early Childhood Family Day Care) Regulations 2006</i> ³	18 Jan 2006 p. 239-88	1 Mar 2006 (see r. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Children and Community Services (Early Childhood Family Day Care) Amendment Regulations 2006</i>	1 Mar 2006 p. 937-9	1 Mar 2006
Reprint 1: The Children and Community Services (Family Day Care) Regulations 2006 as at 21 Apr 2006 (includes amendments listed above)		
<i>Children and Community Services (Family Day Care) Amendment Regulations 2006</i>	8 Dec 2006 p. 5379-81	8 Dec 2006
Reprint 2: The Children and Community Services (Family Day Care) Regulations 2006 as at 19 Jan 2007 (includes amendments listed above)		
<i>Children and Community Services (Family Day Care) Amendment Regulations 2007</i>	7 Aug 2007 p. 4034-7	10 Aug 2007 (see r. 2 and <i>Gazette</i> 9 Aug 2007 p. 4071)

- ² Repealed by the *Children and Community Services Act 2004* s. 250.
- ³ Now known as the *Child Care Services (Family Day Care) Regulations 2006*; citation changed (see note under r. 1).
- ⁴ These regulations were made under the *Children and Community Services Act 2004* but continue to operate under the *Child Care Services Act 2007* s. 52 from 10 August 2007 (see s. 56).